BILLS, CHEQUES, AND NOTES

A HANDBOOK FOR LAWYERS AND BUSINESS MEN

TOGETHER WITH

THE BILLS OF EXCHANGE ACT, 1882; THE BILLS OF EXCHANGE (CROSSED CHEQUES) ACT, 1906; AND THE BILLS OF EXCHANGE (TIME OF NOTING) ACT, 1917

BY

J. A. SLATER,

B.A., LL.B. (Lond.)

AUTHOR OF "MERCANTILE LAW"

OF THE MIDDLE TEMPLE AND NORTH-EASTERN CIRCUIT, BARRISTER-AT-LAW

THIRD EDITION

REVISED AND ENLARGED

LONDON

SIR ISAAC PITMAN & SONS, LTD., 1 AMEN CORNER, E.C.4

BATH, MELBOURNE AND NEW YORK

1920

PREFACE

THE object of the present volume is to place before the business man and the general reader a full, clear, and accurate statement of the law relating to Bills of Exchange, Cheques, and Notes.

The law relating to these instruments has been codified by the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61). This statute consists of 100 sections, and is printed in the Appendix. It embodies, practically, the previous decisions of the courts and the provisions of various statutes, clears up numerous doubtful points, and makes the law of England and Scotland in the main identical upon the subject, although as originally drafted the Act applied only to England and Ireland. There are, however, still some special points in which the law of Scotland respecting contracts must be consulted, such as the capacity of parties, the effect of Statutes of Limitation, etc. But, generally speaking, the substance of the law has been unaltered.

Upon the whole the Act has worked in a most satisfactory manner, and the important cases which have been decided since it received the Royal assent have been the outcome of daring and ingenious frauds against which no legislation can be effectually framed. The only substantial difficulty has been the judicial interpretation put upon sect. 82, as to the liability of a collecting banker who receives payment of a cheque for a customer, and to which full reference is made in the text. This defect, however, has been remedied by the Bills of Exchange (Crossed Cheques) Act, 1906, which is set out in the Appendix. There has also been added to the Appendix the Bills of Exchange (Time of Noting) Act, 1917, which came into force on the 8th November, 1917.

References have been made to all the most important cases decided since 1882, and to those of an earlier date which have been considered necessary to explain any doubtful or difficult points raised in connection with the subject. It is almost superfluous to state that a careful study of the cases is essential in order to obtain an accurate knowledge of the principles involved. The dates of the cases have been given in every instance so as to enable the reader to refer to Reports other than those quoted.

CONTENTS

		PAGE
PREFACE		iii
TABLE OF CASES		vii
ABBREVIATIONS		ix
INTRODUCTION		1

I. BILLS OF EXCHANGE

CHAP.		
I.	FORM	11
II.	CAPACITY OF PARTIES	20
III.	CONSIDERATION	28
IV.	THE DRAWER	34
V.	THE ACCEPTOR	38
VI.	THE PAYEE	45
VII.	ISSUE AND NEGOTIATION	49
VIII.	TIME OF PAYMENT	60
IX.	PRESENTMENT	65
X.	DISHONOUR	71
XI.	RIGHTS AND LIABILITIES	81
XII.	FORGERY AND ALTERATION	89
XIII.	DISCHARGES	99
XIV.	MISCELLANEOUS	109

II. CHEQUES

I.	OPEN CHEQUES	122
II.	CROSSED CHEQUES	145

III. PROMISSORY NOTES . . 157

IV. I O U . . . 163

V. SUPPLEMENTARY

I.	ACTION AT LAW	165
II.	STAMPS	170
	APPENDIX	173
	INDEX	205

TABLE OF CASES

Akrokerri (Atlantic) Mines, Limited *v.* Economic Bank, 153
Alcock *v.* Smith, 114
Aldous *v.* Cornwell, 96
Arnold *v.* Cheque Bank, 93, 94
Atwood *v.* Griffin, 51

Backhouse *v.* Charlton, 140
Bank of England *v.* Vagliano, 47, 93, 94, 128
Bank of Van Diemen's Land *v.* Bank of Victoria, 49
Bavins *v.* London and South Western Bank, 125
Baxendale *v.* Bennet, 49
Bechuanaland Exploration Co. *v.* London Trading Bank, 3
Bevan *v.* National Bank, 156
Birmingham Bank, *Ex parte*, 34, 119
Bobbett *v.* Pinkett, 151
British Linen Co. *v* Carruthers, 42
Bruner *v.* Moore, 62

Carew *v.* Duckworth, 131
Carlos *v.* Fancourt, 12
Chamberlain *v.* Young, 14, 46
Chambers *v* Miller, 144
Chapman *v.* Smethurst, 24
Clutton *v.* Attenborough, 128
Cohen *v.* Hale, 139
Collins *v.* Martin, 6
Colonial Bank of Australasia *v.* Marshall, 98, 136
Cote, *Ex parte*, 49
Crouch *v.* Crédit Foncier, 3
Crumplin *v.* London Joint Stock Bank, 25
Currie *v.* Misa, 28
Curtice *v.* London City and Midland Bank, 140

Day *v.* McLea, 107, 140
Decroix *v.* Meyer, 41

Edelstein *v.* Schuler & Co., 4
Edwards *v.* Barnard, 26
——— *v.* Walters, 105
Elkington *v.* Cooke-Hill, 28
English Bank of River Plate, *In re*, 86

Fengl *v.* Fengl, 172
Fielding *v.* Corry, 75
Foley *v.* Hill, 143
Foster *v.* Dawber, 104
Foster *v.* Mackinnon, 27, 119
Fry *v.* Hill, 66

Galbraith *v.* Provident Bank, Ltd., 21
Geary *v.* Physic, 34, 119
Gelmini *v.* Moriggia, 63
Glenie *v.* Tucker, 36
Goddard *v.* O'Brien, 139
Godsell *v.* Lloyd, 30
Goodwin *v.* Robarts, 3, 4, 6
Gordon *v.* Capital and Counties Bank, 153
Great Western Railway Co. *v.* London and County Banking Co., 152

Hardy *v.* Veasey, 132
Hay *v.* Ayling, 33
Hedley *v.* Bainbridge, 26
Heeney *v.* Addy, 18
Heilbut *v.* Nevill, 95
Henderson *v.* Arthur, 19
Herdman *v.* Wheeler, 36, 95
Hirachand Punamchand *v.* Temple, 108
Hitchings & Coulthurst Co. *v.* Northern Leather Co. of America, 19
Hobbs *v.* Cathie, 125
Hogg *v.* Skeen, 95
Homfray *v.* Scroope, 63
Hopkins *v.* Abbott, 157
Horne *v.* Rouquette, 115
House Property Co. of London *v.* London County and Westminster Bank, 156
Hutley *v.* Peacock, 21

Jenkins *v.* Coomber, 57
Jones *v.* Gordon, 118

Kaufman *v.* Gerson, 33
Keene *v.* Beard, 8
Kennedy *v.* Thomas, 61, 100
Kerrison *v.* Glyn, Mills, Currie & Co., 143
King *v.* Zimmerman, 83

Kirkwood *v.* Carroll, 157

Lacave *v.* Crédit Lyonnais, 152
Ladbroke & Co. *v.* Todd, 156
Landes *v.* Marcus, 24
Lawrence & Sons *v.* Willcocks, 166
Leslie *v.* Shiell, 127
Levene *v.* Brougham, 127
Lewes Steam Laundry Co. *v.* Barclay & Co., 132
Lewis *v.* Clay, 27, 119
Little *v.* Slackford, 12
Lloyds Bank *v.* Cooke, 36
London Joint Stock Bank *v.* Simmons, 3, 118
London Joint Stock Bank *v.* Macmillan, 137

Macbeth *v.* North and South Wales Bank, 129
Macdonald *v.* Union Bank, 8
Macmillan *v.* London Joint Stock Bank, Ltd., 98
Mactavish's Judicial Factor *v.* Michael's Trustee, 69
Male *v.* Roberts, 20
Martin *v.* Boure, 4
Marzetti *v.* Williams, 131
Meyer *v.* Ser Hai Tong Banking and Insurance Co., 153
Miller *v.* Race, 5
Mitchell-Henry *v.* Norwich Union Life Insurance Society, Ltd., 142
M'Lean *v.* Clydesdale Banking Company, 7
Morison *v.* Kemp, 24
Morison *v.* London County and Westminster Bank, 24
Moulis *v.* Owen, 33
Musurus Bey *v.* Gadban, 63

Nash *v.* De Freville, 101
National Park Bank *v.* Berggren & Co., 31
New London Credit Syndicate *v.* Neale, 19
Nicholls *v.* Evans, 33
North and South Wales Bank *v.* Macbeth, 133

Oettinger *v.* Cohn, 172
Ogden *v.* Benas, 151
Owen *v.* Van Uster, 26

Paine *v.* Bevan, 129
Partridge *v.* Coates, 143
Pennington *v.* Crossley, 142
Pott *v.* Clegg, 7, 143

Raatz, *Ex parte*, 83, 106
Raphael *v.* Bank of England, 117
Richdale, *Ex parte*, 153
Roberts & Co. *v.* Marsh, 12
Robinson *v.* Benkel, 33
Rogers *v.* Whiteley, 141
Rouquette *v.* Overman, 116
Royal Bank of Scotland *v.* Tottenham, 132

Sandemann *v.* Scurr, 22
Scholfield *v.* Earl of Londesborough, 97, 136, 138
Schroeder *v.* The Central Bank of London, 122
Scott *v.* Morley, 21
Shaw & Co. *v.* Holland & Neal, 57
Skyring *v.* Greenwood, 143
Smethurst *v.* Taylor, 23
Smith *v.* King, 20
——— *v.* Prosser, 36, 49
——— *v.* The Union Bank, 146, 151
Société des Hôtels Réunis *v.* Hawker, 33
Soltykoff, *Re*, 20
Sottomayer *v.* De Barros, 20
Stacey & Co. *v.* Wallis, 38
Stocks *v.* Wilson, 127

Talbot *v.* Von Boris, 32

Vinden *v.* Hughes, 128, 129

Wauthier *v.* Wilson, 21
Woolf *v.* Hamilton, 33

Yates *v.* Terry, 141
Yorkshire Banking Co. *v.* Beatson, 26
Young *v.* Glover, 39, 53
——— *v.* Grote, 98, 136

ABBREVIATIONS USED IN REFERRING TO REPORTS OF CASES

B. & C.	Barnwall and Cresswell	1823–30
B. & P.	Bosanquet and Puller	1796–1807
B. & Ad.	Barnwall and Adolphus	1830–34
Bing.	Bingham	1822–40
Burr.	Burrow	1757–71
C.B.	Common Bench	1845–65
C. & P.	Carrington and Paine	1823–41
Com. Cas.	Commercial Cases	1896–
Court Sess.	Court of Sessions Cases (Scotland)	—
Cro.	Croke's Reports . Elizabeth, James I, and Charles I	
Esp.	Espinasse	1793–1807
Ex.	Exchequer Reports	1847–56
F.	Fraser's Court of Sessions Reports (Scotland)	—
H.L.C.	House of Lords Cases	1847–65
Ir. R.	Irish Law Reports	1878
Jur.	The Jurist	1837–66
L.J. C.P.	Law Journal Common Pleas	1828–
L.J. Ex.	,, Exchequer	
L.J. Q.B.	,, Queen's Bench	
L.T.	Law Times Reports	1843–
M. & M.	Moody and Malkin	1827–30
M. & W.	Meeson and Welsby.	1836–47
Q.B.	Queen's Bench Reports	1841–52
Rettie	Rettie's Scotch Justiciary Reports	1873–98
R. & M.	Ryan and Moody	1823–26
S.C.	Sessions Cases (Scotland)	1906–
T.L.R.	Times Law Reports	1884–
T.R.	Term Reports	1785–1800
Taunt.	Taunton	1807–19

LAW REPORTS

L.R. C.P.	Common Pleas	1865–75
L.R. Ch.	Chancery Appeals	
L.R. Eq.	Equity	
L.R. Ex.	Exchequer	
L.R. P.C.	Privy Council Appeals	
L.R. Q.B.	Queen's Bench	

App. Cas.	House of Lords Appeals		
C.P.D.	Common Pleas Division		
Ch. D.	Chancery ,,	. .	1875–90
Ex. D.	Exchequer ,,		
P.D.	Probate ,,		
Q.B.D.	Queen's Bench ,,		
1891– App. Cas.	House of Lords Appeals (and Privy Council Appeals)		
1891– Ch.	Chancery Division	. .	1891–
1891– P.	Probate ,,		
1891– Q.B. (K.B. since 1901)	Queen's Bench Division (King's Bench)		

BILLS, CHEQUES, AND NOTES

INTRODUCTION

BILLS of Exchange, Cheques, and Notes, the documents which are exclusively treated of in the present volume, form, after coin of the realm, the most common examples of what are known as "negotiable instruments." There is a well-known maxim of the English common law that no person can give to another that of which he has not the true ownership—*nemo dat quod non habet.* This maxim applies to all ordinary chattels, and therefore no one but the rightful owner can, except in so far as provision is made by statute, transfer the property, that is, the absolute ownership, in them. Negotiable instruments, however, are an exception to this rule. "A negotiable instrument," writes an eminent authority, "is one the property in which is acquired by anyone who takes it *bonâ fide* and for value, notwithstanding any defect of title in the person from whom he took it; from which it follows that an instrument cannot be negotiable unless it is such and in such a state that the true owner could transfer the contract or engagement contained therein by simple delivery of the instrument." The latter part of the definition is important—the document must be complete at the time of transfer. Its significance will appear when the documents are dealt with in detail.

Negotiable Instruments.

There are three important particulars in which negotiable instruments differ from ordinary chattels:—

Special Characteristics of Negotiable Instruments.

(1) The property in them, that is the complete right of ownership, passes by delivery, and not merely the possession, that is, the right of retaining the same as against any person except the true owner.

(2) The holder in due course (see Bills of Exchange Act, 1882, sect. 29) is not affected by any defect of title on

the part of the transferor or of any previous holder. He holds the instruments "free from all the equities."

(3) The holder in due course can sue upon them in his own name.

These are the three great qualities which go to make up what is called "negotiability." A rough-and-ready test as to negotiability has been sometimes applied by the following question, "Can a title be made through a thief?" If the answer is in the affirmative, the instrument is negotiable; if it is in the negative, it is not negotiable.

A slight consideration will show the great distinction which exists between negotiability and assignment, and the special advantages which are attached to the former. By the common law the benefit of a contract could not be assigned, that is, if A and B had entered into a contract, no other party than A or B could sue or be sued upon it in case of a breach. Various exceptions to this rule were made by statutes in respect of certain contracts, but it was not until after the passing of the Judicature Act, 1873, that a complete change was effected. Now, however, an assignment of the benefit of a contract is possible, and the assignee is enabled to sue in his own name upon it, provided (*a*) that it is an absolute assignment, and not by way of charge only; (*b*) that the assignment is in writing and signed by the assignor; and (*c*) that notice of the assignment is given in writing to the debtor. But although the benefit of a contract can be assigned in this manner, the assignee can only acquire the rights which were possessed by the assignor. And so, if a debtor has a counterclaim or a set-off against his creditor, and the creditor assigns his rights to a third person, the assignee will be able only to enforce so much of the claim as the original creditor could have done, and will be bound to allow the counterclaim or the set-off. This is what is meant by an assignment "subject to the equities." In the same way, if a creditor has only a defective title to anything which he purports to assign, the title of the assignee, after the assignment, is affected with the same defect. There is nothing of this kind when a negotiable instrument is transferred, and the transferee becomes a holder in due course. The holder sues in his own name, and is not affected by anything in the shape of a counterclaim or a set-off.

Negotiability and Assignment.

An illustration may perhaps make this difference clearer. A is

entitled to receive £100 from B for carrying out certain work. B has a separate claim, or counterclaim, against A for something totally distinct from A's claim to the extent of £50, or he has a right to make a deduction of £50 from the cost of the work and set off the same against the claim. It will be seen that in either case A is not entitled to receive more than £50 in all, and if he assigns his rights under the contract to C, although the assignment is of £100, C cannot claim more than £50, the amount to which A himself would have been entitled, and if C attempts to enforce his rights by action against B, he will be compelled to allow the amount of the counterclaim, or the set-off, as the case may be, just in the same manner as A would have been compelled to do. But if, on the other hand, B has accepted a bill of exchange drawn by A for £100, or has given A a cheque for the amount, and A has then transferred the bill or the cheque to C, under such circumstances that C became a holder in due course, C can then sue B upon the bill or the cheque for the £100, and no question can be raised as to any counterclaim or set-off at all.

Illustration.

Negotiability is a creation of mercantile custom, which thus became a part of the *lex mercatoria*, or law merchant. Commerce would have been seriously hampered if it had always been necessary to inquire into the whole history of every document or chattel transferred in the course of business. Now, partly by custom and partly by statute law, the character of negotiability has been acquired by a certain number of documents and chattels. The principal of these are coin of the realm, bills of exchange, cheques, promissory notes, bank notes, Exchequer bills, East India bonds, bonds of foreign and colonial governments, dividend warrants, and share warrants. Until quite recently it was thought by eminent authorities that the list of negotiable instruments was complete, and this view was taken by the court in *Crouch v. Crédit Foncier*, 1873, L.R., 8 Q.B. 374. Some doubt was thrown upon this decision in *Goodwin v. Robarts*, 1875, L.R., 10 Ex. 337, (at p. 346), and in *London Joint Stock Bank v. Simmons*, 1892, App. Cas. 201; and in *Bechuanaland Exploration Co. v. London Trading Bank*, 1898, 2 Q.B. 658, it was held that where it has been shown that by mercantile usage the debentures of an English company were treated as negotiable, the court would give effect to such usage, even though the usage was of recent

History of Negotiability.

origin. This case was followed by Bigham, J., in *Edelstein v. Schuler & Co.*, 1902, 2 K.B. 144, on similar evidence, the learned judge stating that he was, perhaps, inclined to go even further than Kennedy, L.J. (then Kennedy, J.), had gone in the former case. It is presumed, therefore, that the list of negotiable instruments may be increased, if necessary, almost indefinitely.

Origin and History of Bills and Notes.

The origin and history of bills of exchange and other negotiable instruments are traced in the judgment of the court in the case of *Goodwin v. Robarts*, 1875, L.R., 10 Ex. 337, and the reader is referred to the report of that case for the fullest information upon the subject. It appears that bills of exchange were first brought into use by the Florentines in the twelfth century, and that they were common in Venice during the thirteenth century. They made their way at a later period into France, and afterwards became known in England. The first mention of them in this country, so far as is known, is in a statute of 3 Rich. II, c. 3, where bills of exchange are referred to as a means of conveying money out of the realm, though not as being in use amongst English merchants. Promissory notes payable to bearer, or to a man and his assigns, were known in the time of Edward IV. But the use of these instruments must have been remarkably limited, for in a work called the "Lex Mercatoria," published in 1622, the author, Richard Malynes, a London merchant, gives a full account of bills of exchange as used by the merchants of Amsterdam, Hamburg, and other places, and expressly states that such bills were not then used in England. Further, as an indication of the slowness with which they gained a footing in England, it is interesting to note, and this proves that the statement of Malynes is not quite accurate, there is not a case to be found in the English books before that of *Martin v. Boure*, 1603, Cro. Jac. 6, in the reign of James I. There can be no doubt that "the introduction and use of bills of exchange in England seems to have been founded on the mere practice of merchants, and gradually to have acquired the force of custom." At first bills were made payable to a man and his assigns, or sometimes to bearer. But about the beginning of the seventeenth century the practice arose of making bills payable to bearer, and of transferring them by indorsement. The date of the first indorsement is uncertain. Hartmann, a learned German writer, ascribes it to 1607, whilst M. Nouguier, a French

authority, puts it at 1620. The convenience of indorsement led to its being rapidly adopted by merchants, and it soon gained the full sanction of the English courts. Bills of exchange were no doubt originally confined to merchants trading between different countries. Their advantage, however, soon led to their use being extended to bills between traders in the same country, and eventually to bills of all persons, whether traders or not.

Promissory notes came into use at a later date than bills of exchange, and, as it has been pointed out above, the first mention of them in England was nearly a century later than the mention of bills of exchange. The earliest promissory notes were made payable to bearer. But as soon as the advantage of indorsement had been made manifest in the case of bills of exchange, the practice of making promissory notes payable to order and transferring them by indorsement prevailed, and the courts of law made no distinction between the instruments in this respect. There are various cases reported in the seventeenth century which make this quite clear, but eventually a conflict arose between Chief Justice Holt and the merchants as to this question of negotiability by indorsement of promissory notes, the Chief Justice setting his face strongly against it, whereas the merchants claimed the right as having been established by custom amongst themselves. It is unnecessary, as it would be unprofitable, at this period to enter into the merits of the controversy. The merchants, however, conquered in the end, for a statute was passed, 3 & 4 Anne, c. 9, whereby promissory notes were made capable of being assigned by indorsement, or made payable to bearer, and such assignment was thus rendered valid beyond all dispute or difficulty. Thus, what had been gained as regards bills of exchange by custom existing amongst merchants was acquired so far as promissory notes were concerned by legislation.

Promissory Notes.

After bills of exchange and promissory notes, a new form of security came into general use, viz., goldsmiths' or bankers' notes. They quickly came to be recognised as a part of the currency of the country, and in *Miller v. Race*, 1791, 1 Burr. 452, Lord Mansfield held that the property in such notes passed, like the property in cash, by delivery, and that a party who took them *bonâ fide*, and for value, was entitled to hold them as against a former owner from whom they had been stolen. This case

Bank Notes.

was followed by *Collins v. Martin*, 1797, 1 B. & P. 648, and the negotiability of bank notes was completely established.

History of Cheques.

When money was originally deposited with the goldsmiths, who were the forerunners of the bankers, a note was given to the depositor by way of acknowledgment. But there arose very early a practice for the depositor to withdraw a part of his deposit by means of written or verbal instructions that his account should be debited with the amount required by him. There are some interesting specimens of such orders in the possession of Messrs. Child & Co., of which the following are examples :—

"*Dec.* 11, 1680.

"*Received of Sir Francis Child* £73 1 2 *being the balance of my account to this day. I say* £73 1 2.

"*Ellen Gwyn.*

"*Witness.*

"*J. A. Boothby.*"

"*Mr. Rogers pray paye Fifty guineas to the bearer and place it to my account.*

"*April* 12, 1689." "*Cleveland.*

In the course of time a common form of order came into use, somewhat like the old order, and eventually the modern well-known form of cheque was introduced.

Negotiability of Cheques.

As to the negotiability of cheques, the following observations were made in the course of the judgment in *Goodwin v. Robarts*, to which reference has already been made in connection with bills of exchange and promissory notes, at p. 351 of the report. "Another very remarkable instance of the efficacy of usage is to be found in much more recent times. It is notorious that, with the exception of the Bank of England, the system of banking has recently undergone an entire change. Instead of the banker issuing his own notes in return for the money of the customer deposited with him, he gives credit in account to the depositor, and leaves it to the latter to draw upon him, to bearer or order, by what is now called a cheque. Upon this state of things the general course of dealing between bankers and their customers has attached incidents previously unknown, and these, by the decisions of the courts, have become

fixed law. Thus, while an ordinary drawee, although in possession of funds of the drawer, is not bound to accept, unless by his own agreement or consent, the banker, if he has funds, is bound to pay on presentation of a cheque on demand. Even admission of funds is not sufficient to bind an ordinary drawee, while it is sufficient with a banker; and money deposited with a banker is not only money lent, but the banker is bound to repay it when called for by the draft of the customer (*Pott v. Clegg*, 1849, 16 M. & W. 321). Besides this, a custom has grown up among bankers themselves of marking cheques as good for the purposes of clearance, by which they become bound to one another."

Any doubt that ever existed as to the negotiabili ty of cheques was settled by the Bills of Exchange Act, 1882, sect. 73 of which is as follows, "A cheque is a bill of exchange drawn on a banker payable on demand." As a bill of exchange is most certainly a negotiable instrument, so now is a cheque. But it is interesting to consider the judgment of Lord Blackburn upon this point in *M'Lean v. Clydesdale Banking Company*, 1883, 9 App. Cas. 95. (This decision was given after the passing of the Act of 1882, but was concerned with a cheque drawn before that date.) "Here is a cheque drawn upon a banker, and that cheque is upon the face of it payable to order. It is said very confidently . . . that such a cheque drawn upon a banker is not, by the law of Scotland, negotiable. Why that is said we will see in a moment. I do not think that the Bills of Exchange Act applies to this case, for it did not receive the Royal assent until some months after the cheque had been issued; but I do think that the enactments in that Act are very good evidence of what had been the general understanding before it was passed, and of what was the law upon the subject. Now the definition which in that Act is given of a bill of exchange (sect. 3) is one which I think will be found in most treatises as the definition of a bill of exchange, and has always been considered the right one. . . . That definition completely embraces in it a cheque. A cheque is such an order: an unconditional order in writing addressed to a banker requiring him to pay a sum certain in money at a fixed or determinable future time, that is to say, on presentation; and coming within that definition it would clearly be a bill of exchange. Why should a cheque not be a bill of exchange? No reason

M'Lean v. Clydesdale Banking Company.

whatever, that I am aware of, can be assigned for its not being so. The fact is that for the purpose of fiscal regulations—on grounds which were supposed to be satisfactory to the legislature—it was enacted that cheques on bankers, or on persons acting as bankers, should not be liable to stamp duty. But there were qualifications put upon that; they were not to be liable to stamp duty provided they were only payable to bearer, and provided they were issued within fifteen miles of the place of business of the banker. These qualifications have long ceased, but while they existed cheques upon bankers were very much confined in their negotiability and use, because the heavy penalties which would have been incurred if those limits had been transgressed prevented their being transgressed—openly at least. I believe as a matter of fact cheques were drawn for enormous sums more than fifteen miles distant from the place of business of the banker, the parties resolutely shutting their eyes to the facts of the case, and running the risk of the penalty. All that, however, is now done away with.

"Now why should a cheque drawn on a banker for that reason be in any different position, as far as negotiability goes, from a cheque or bill drawn upon anybody else? There is no apparent reason for it whatever. There is one difference at least, and there may be more, between a cheque and a bill of exchange. A bill of exchange would, unless something appeared to show that it was not to be so, have the days of grace, while a cheque has no days of grace; there is that difference, but it makes no further difference that I am aware of. Looking at the thing according to reason and sense it would appear that a bill of exchange or a cheque drawn upon a banker should be in all respects equally negotiable as if it were not drawn upon a banker, but were drawn upon some one else. Accordingly it has repeatedly been so held in England, and I do not think that is disputed. The case in which that was positively decided in England was the case of *Keene v. Beard*, 1860, 8 C.B. 372. The question there was very much indeed like that which was afterwards decided by the Court in Scotland in the case which has been referred to of *Macdonald v. Union Bank*, 1864, 2 Court Sess. Cas. 3rd Ser. 963. The question there was whether, when a cheque had been drawn upon a banker payable to bearer, and the person who received it had afterwards written his name upon it as the indorser of it, and had passed it away in that manner, the person

who had thus indorsed it to another was liable to that other as indorser. It was decided that he was. That decision proceeded upon the ground that a cheque was in no respect different from an inland bill of exchange. So those who drew the Bills of Exchange Act thought; for in part III they begin with this definition of a cheque: 'A cheque is a bill of exchange drawn on a banker payable on demand'; and then they proceed to declare and enact that a cheque in future at all events is to be like a bill of exchange in all respects. Why should not that have been the law before? It is said that it is not the law in Scotland. Now, for all I know to the contrary, there may be some respects in which in the law of Scotland a bill of exchange and a cheque are not the same. I have already pointed out one difference, namely, that there are days of grace in the case of a bill of exchange which there are not in the case of a cheque. That is not material to the present case. But besides that it may be that there are other differences in the law of Scotland, as to summary diligence, and modes of enforcing it, and privileges of that sort. It may be (I do not know anything about it) that those remedies are by the law of Scotland not applicable to cheques, but are applicable to bills of exchange; and some of the passages which have been quoted from Lord Neaves and relied upon look very much as if he had thought so. But when you come to see whether a cheque is not a negotiable instrument as well as a bill of exchange, the authorities in Scotland seem to be uniformly to the effect that it is negotiable, and that it is to be recovered upon under exactly the same circumstances as any other negotiable instrument would be. I myself think, especially now when the fiscal laws are taken away, and when we all know in point of fact that a large number of cheques are drawn for entirely the same purpose as bills of exchange (for example, a gentleman resident in London draws a cheque upon a Scotch banker and transmits it to a tradesman, or some other person, to whom he has to pay money, in order to accomplish the proper object of a bill of exchange, namely, to transfer money from one country to another, or from one person to another), it would be extremely injurious to commerce if there were any doubt at all upon the point that a cheque is a negotiable instrument like other bills of exchange.

"Now on this point the authorities seem to be uniform. There may be that distinction which Lord Neaves put, that some of the

summary remedies which are applicable to the one instrument are not applicable to the other; but otherwise the authorities are uniform to the effect that a cheque given in this way is a negotiable instrument in Scotch law, and consequently that the holder of it to whom the property in it has been transferred for value, either by delivery or by indorsement, is entitled to sue upon it, if upon due presentation it is not paid."

The present volume deals with bills of exchange, cheques, promissory notes, and bank notes. A few words will also be devoted to the very common form of acknowledgment known as an I O U, although this instrument is in no respect negotiable, nor has it any value except in the way of evidence.

I O U

I—BILLS OF EXCHANGE

CHAPTER I

FORM

A BILL of exchange, or, as it is sometimes called, a draft, is defined by the Act of 1882, as " an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer." Every word of this definition requires the most careful study, for if an instrument does not comply with all the requirements set out it is not a bill of exchange, and the holder of it will not be in possession of a negotiable instrument.

Definition.

Upon a close examination of the definition it will be noticed that there are eight points to be observed: (*a*) an order, (*b*) no condition imposed, (*c*) writing, (*d*) signature by the person giving the bill, (*e*) a person to whom the order is given, (*f*) a fixed or determinable future time of payment, (*g*) a sum certain in money, and (*h*) a payee. Each of these will be briefly noticed in the present chapter, fuller discussion, where necessary, being deferred to later pages.

Eight Points.

Little need be said as to the order contained in a bill. When a bill of exchange is drawn it is presumed that there are funds in the hands of the person to whom the order is given which are payable in any case to the person giving the order. To frame a bill, therefore, in such a manner that it might be treated as a mere request would lead to inconvenience and uncertainty. The insertion of a courteous word like " please " would not invalidate an instrument purporting to be a bill of exchange. But where a document was drawn as follows:—

Order.

" *Mr. Little, please to let the bearer have seven pounds, and place it to my account, and you will oblige*

" *Your humble servant,*

" *R. Slackford,*"

it was said by Lord Tenterden, C.J., " the paper does not purport to be a demand made by a party having a right to call on the other

to pay. The fair meaning is, 'You will oblige me by doing it'" (*Little v. Slackford*, 1828, M. & M. 171). Such a document is not a bill of exchange.

The order to pay must be unconditional. "Certainty is the great object in negotiable instruments, and unless they carry their own validity on the face of them they are not negotiable. On that ground bills which are only payable on a contingency are not negotiable, because it does not appear on the face of them whether or not they will ever be paid" (*Carlos v. Fancourt*, 1794, 5 T.R. 482). It would be highly inconvenient in commercial transactions if paper securities were issued incumbered with conditions and contingencies, and if the persons to whom they were offered in negotiation were compelled to inquire when the uncertain events would probably be reduced to a certainty. Thus, an order to pay "out of money due to you from A B, as soon as you receive it" is conditional, because A B may never pay the money at all. And, generally, an order to pay out of any particular fund is conditional. But where there is "an unqualified order to pay, coupled with (*a*) an indication of a particular fund out of which the drawee (that is, the person to whom the order to pay is given) is to reimburse himself, or a particular account to be debited with the amount, or (*b*) a statement of the transaction which gives rise to the bill," this is unconditional (sect. 3, ss. 3). In a recent case, the defendant gave to the plaintiff a cheque drawn upon a sheet of blank paper, and wrote the words "to be retained" on its face, promising to send a cheque on one of his bankers' printed forms in substitution for it. It was held that these words did not make the cheque conditional within sect. 3 as regards the bankers upon whom it was drawn (*Roberts & Co. v. Marsh*, 1915, 1 K.B. 42).

No Condition Imposed.

A bill of exchange was required to be in writing by the custom of merchants, and this requirement was adopted into the common law. It may here be noted that a promissory note was subject to a like requirement by 3 & 4 Anne, c. 9. Now by the Act of 1882 every engagement connected with a bill of exchange or a promissory note must be signified by writing upon the instrument itself.

Writing.

The person who gives the order to pay is called the "drawer," and he must sign the bill. Until his signature is affixed thereto

the document is incomplete and of no effect. But, as will be explained hereafter, this signature may be added at any time after the issue of the bill (sects. 18 and 20). Since the word "person" is defined by the Act as including a "body of persons whether incorporated or not," the signature may be that of an individual, a number of individuals, a firm name, or the name of a society.

Signature of Drawer.

The next requisite is that the document shall be addressed to a person (or to a body of persons, as explained in the last paragraph), ordering payment to be made by him. The person to whom the order is addressed is called the "drawee," and if the drawee signifies his assent to the order of the drawer in due form he is then called the "acceptor."

Drawee to be Designated.

A time for payment must be fixed, or it must, at least, be determinable in the future. This condition is imperative, in order that a person who has a right of action upon the document may know when payment becomes due and when he will be able to sue upon it. It is also of the utmost importance, since the law will not allow a right of action to continue for an indefinite period, and a date must be clearly set out showing the time from which the period prescribed for limiting the right of action is to be calculated.

Time for Payment.

The order for payment must be in money, and in money only—that is, in legal tender.[1] Formerly restrictions were imposed upon

[1] By the Coinage Act of 1870 the following are declared to be legal tender in the United Kingdom:—

(1) Gold coins up to any amount.
(2) Silver coins up to two pounds.
(3) Bronze coins (pence and half-pence) up to one shilling.

"In England and Wales (but not in Ireland or Scotland) Bank of England notes payable to bearer on demand are a legal tender for any sum above £5, so long as the bank continues to pay its notes in legal coin, except at and by the bank itself or its branches. The bank in London is bound, on presentation, to pay the holder of any of its notes in money; its branches are bound to pay in money only such notes as are made specially payable at the branch where the note is presented for payment." (See Bank of England Act, 1833, 3 & 4 Will. IV, c. 98, s. 6.)

The King in Council is empowered to proclaim that the gold coinage of colonial mints shall be legal tender throughout such parts of his dominions as may be specified in the proclamation.

It will be noticed, as a curious circumstance, that whereas a £5 note is presumably not a legal tender for a debt of £5, a debt of £5 0s. 1d. can be legally discharged by a £5 note and a penny.

Treasury Notes for £1 and 10s., which were issued at the beginning of the War in 1914, were made legal tender for any amount by the Currency and Bank Notes Act, 1914.

the issue of negotiable bills and notes for a sum of less than 20s. These restrictions have now been removed, and there is no limit as to the amount for which a bill, a cheque, or a note may be drawn. It would appear, however, that, by an oversight, the Act, which applies to the whole of the United Kingdom (including the Channel Islands and the Isle of Man) failed to repeal the Bank Notes (Scotland) Act, 1845 (8 & 9 Vict. c. 38). By this Act, negotiable bills and notes for sums of less than 20s. were declared void in Scotland, and their issue and negotiation forbidden under a penalty. The only exception to this enactment was one made in favour of drafts on a banker for the payment of money "held to the use" of the drawer.

Payment of Money.

"The sum payable by a bill is a sum certain within the meaning of the Act, although it is required to be paid (*a*) with interest, or (*b*) by stated instalments, (*c*) by stated instalments, with a provision that upon default in payment of any instalment the whole shall become due, (*d*) according to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill" (sect. 9, ss. 1).

The last of the special points to be noticed in the definition is that payment must be ordered to be made to or to the order of a specified person, or to bearer. The person to whom or to whose order payment is directed to be made is called the "payee." It frequently happens that the payee is the drawer himself, whether the bill is drawn payable to order or to bearer. And it has been held that where a bill was drawn "pay —— or order," this signifies that the drawer is the payee, and the bill becomes negotiable by the indorsement of the drawer (*Chamberlain v. Young*, 1893, 2 Q.B. 206). As will be shown hereafter, the payee, if the bill is made payable to his order, is required to indorse the bill, that is, to write his name upon the back of it, in order that it may be negotiated, and he then becomes the indorser. Where the payee is a fictitious or a non-existent person the bill may be treated as one payable to bearer.

Payee.

For the purpose of convenience it is proposed to deal, first of all, with inland bills, reserving the discussion of foreign bills, which differ from inland bills in several important particulars, for a separate chapter. An inland bill is defined as "a bill which is or on the face of it purports to

Inland and Foreign Bills.

be (*a*) both drawn and payable within the British Islands, or (*b*) drawn within the British Islands upon some person resident therein. ' Any other bill is a foreign bill. . . . Unless the contrary appear on the face of the bill the holder may treat it as an inland bill " (sect. 4).

Although the Act gives a full and comprehensive definition of a bill, it does not set out any special form of words which are imperatively necessary in order that validity may be given to it. And there is nothing in the Act which precludes a bill from being drawn in any language which is intelligible, provided that it complies with all the requirements of the definition of the document. But, in practice, the form of a bill does not often differ from one of the following specimens :—

Specimens.

(I)

£50. *Birmingham,*
September 2nd, 1918.

Two months after date pay to James Smith or order fifty pounds for value received.

George Johnson.

To Messrs. Alfred Jones & Co.,
Manchester.

(II)

£240. *Manchester,*
September 9th, 1918.

Three months after date pay to me or to my order the sum of two hundred and forty pounds for value received.

Alfred Johnson.

To Mr. Joseph Tomlinson,
34 Shetland Street,
Leeds.

(III)

£148. *Sheffield,*
September 16*th*, 1918.

One month after date pay to bearer one hundred and forty-eight pounds for value received.

Edward Holmes.

To Mr. Edgar Austin,
756 Oxford Street,
Manchester.

(IV)

£500. *Bristol,*
September 23*rd*, 1918.

On demand pay to me or to my order the sum of five hundred pounds for value received.

Joseph Thomas.

To Mr. Edward Jones,
Cardiff.

(The value of the stamp in the last example should be noted. The duty was changed from 1d. to 2d., as in the case of cheques, by the Finance Act, 1918. As to stamps generally, see p. 166.)

It will be noticed that in the specimens of bills of exchange just set out, certain additions are made which are not demanded by the definition of a bill already given. But these are all matters of practice and not of necessity.

Place of Making.

The insertion of the name of the place of making helps to identify the drawer; but its absence does not render a bill void. "A bill is not invalid by reason . . . that it does not specify the place where it is drawn or the place where it is payable" (sect. 3, ss. 4) (*c*).

An undated bill is valid, though it is irregular for a bill to be issued which does not bear a date. A holder of a bill is permitted, under sect. 12 of the Act, to insert the true date of the bill if it is issued undated, and he is not in any way prejudiced in his rights if the date inserted turns out to be incorrect, provided the mistake has been made in good faith. "A bill is not

Date.

invalid by reason only that it is ante-dated, or post-dated, or that it bears date on a Sunday" (sect. 13, ss. 2). It is a presumption of law that any date upon a bill, signifying the time of its drawing, acceptance, or indorsement, is the true date of such drawing, acceptance, or indorsement, until the contrary is proved.

The first words of the bill, when one of the common forms as above is used, indicate the time when the bill becomes payable.

Time for Payment.

As it has been already pointed out, the time for payment must not depend upon a contingency, and the defect is not cured by the happening of the contingent event. Subject to the allowance of "days of grace" (*infra*), the date is fixed by the instrument, *e.g.*, three months after date. The time may also be fixed and determinable if it is expressed to be after the occurrence of a specified event which is certain to happen, *e.g.*, one month after the death of A. A bill is payable immediately if it is expressed to be payable on demand, or at sight, or on presentation, and if no time at all for payment is indicated; thus, if a bill commences "Pay A B or order," it is also payable on demand. Moreover, if a bill is accepted or indorsed when it is overdue, it is, so far as the acceptor who so accepts it, or any indorser who so indorses it, deemed to be payable on demand (sect. 10, ss. 2). When a bill is drawn at a certain time after sight or after demand, the bill must be presented before a calculation of the due date of payment can be made.

The three names which appear upon the face of a bill are those of the drawer, the drawee, and the payee—though the payee may

Parties.

be, and often is, the drawer himself. The liability of each will be considered hereafter separately. In addition, when the bill is negotiated the names of other persons may appear upon the back of the bill as indorsers. No person, however, is ever liable upon a bill unless he has signed it, or some other duly authorised person has signed it in his stead. But as soon as his signature has been affixed he is saddled *primâ facie* with liability. He has, in fact, become a "party" to the bill. Those persons who are in direct relationship with each other, *e.g.*, the drawer and the acceptor, the drawer and the payee, an indorsee and the immediately preceding indorser, are called "immediate parties." All other parties are "remote parties."

From the examples given it will have been noticed that a bill

of exchange is sometimes drawn payable to a person or order, sometimes to a person or bearer. This is an important distinction and affects the mode of transfer of the bill. If the bill is expressed to be payable to order, or simply to a particular person, no transfer is complete unless the person to whose order or in whose favour it is drawn—or his duly authorised agent—has indorsed his name thereon. If a bill is expressed to be payable to bearer, no indorsement is required. It may also be noticed here that a bill which has got into negotiation is also payable to bearer, no matter what it was in its early stages, if its last or only indorsement is in blank, that is, when it does not specify a particular person to whom or to whose order the bill is indorsed. These provisions apply when a bill is negotiable. It is quite possible for a bill to be drawn containing words prohibiting transfer, *e.g.*, "Pay A B only." Such a bill cannot be put into circulation; in fact, it is not a negotiable instrument, although valid as between the parties to it.

Order or Bearer.

The amount for which a bill is drawn is generally indicated in figures in the top left-hand corner, and in words in the body of the bill. If the amounts do not agree, that amount expressed in words governs the instrument. In an Irish case, where a promissory note bore the amount £50 in the margin, but no sum was stated in the body of the note, it was held that as between the original parties to it there was a valid and complete note for £50, there being evidence to show that they had so regarded it, and a judicial finding that the note had been given in payment of a debt of £50 (*Heeney v. Addy*, 1910, 2 Ir. R. 688). Where the bill is expressed to be payable with interest, interest runs, unless the instrument provides otherwise, from the date of the bill, and if the bill is issued undated it runs from the date of the issue thereof (sect. 9).

Amount.

The words "for value received" are almost invariably used by way of conclusion, but they are not essential to the validity of a bill. In a bill of exchange there is always a *primâ facie* presumption of consideration, that is, that value has been given. This presumption, however, is liable to be rebutted by extrinsic evidence between immediate parties to show that there was no consideration given, or that the bill itself is tainted with fraud or illegality. But this is the only case in which

Value Received.

extrinsic evidence can be adduced. In every other case the bill speaks for itself, and no evidence is admissible to vary its effect, *e.g.*, an agreement to renew the bill on certain conditions, which would be importing another contract into the contract contained in the bill of exchange, and would therefore need a new consideration to support it. Such evidence would, if admitted, have the effect of contradicting the terms of the written instrument (*New London Credit Syndicate v. Neale*, 1898, 2 Q.B. 487; *Henderson v. Arthur*, 1907, 95 L.T. 772; *Hitchings and Coulthurst Co. v. Northern Leather Co. of America*, 1914, 3 K.B. 907).

CHAPTER II

CAPACITY OF PARTIES

A BILL of exchange is a species of contract, and the general law of contracts is applicable to it. There are, however, some particular points which require special examination. The capacity and authority of parties are dealt with in sects. 22-26 of the Act, the general rule being laid down that "capacity to incur liability as a party to a bill is co-extensive with capacity to contract." This applies to a party to a bill, whether he is a drawer, an acceptor, or an indorser. A distinction must be noticed between capacity and authority. The capacity of a person is a creation of law, and a want of capacity is an incurable defect. Authority is created by the parties themselves, and is a question of fact. Thus, although an infant is, generally speaking, without capacity to contract, he may be appointed as agent, and have authority to act as agent on behalf of his principal. And even though a person may not have authority to enter into a contract in the first instance, his conduct may be ratified afterwards by his principal. It is the general opinion, although the point is not quite free from doubt, that capacity to enter into ordinary mercantile contracts is governed by the law of this country when the contract is made in England (*Male v. Roberts*, 1800, 3 Esp. 163; *Sottomayer v. De Barros*, 1879, 5 P.D. 94).

Who can Contract.

An infant is never liable personally upon a bill of exchange in any capacity, even though the bill is given by him as the price of necessaries supplied. He can only be sued upon the consideration (*Re Soltykoff*, 1891, 1 Q.B. 413). And it has been held that an adult cannot be sued upon a bill given in respect of a debt contracted during infancy, as this amounts to a ratification of the debt, and is contrary to the provisions of the Infants Relief Act, 1874 (*Smith v. King*, 1892, 2 Q.B. 543). But this latter case applies, probably, only to a person who takes the bill with a full knowledge of the circumstances. It is presumed that a holder in due course (*infra*) would not be prejudiced in any action he instituted. It has been pointed out in the last chapter that a bill may be ante-dated. The mere fact that an adult accepts a bill which is

Infants.

dated prior to the attainment of his majority will not constitute a defence in an action on the instrument. But if an infant accepts a bill prior to the date of the attainment of his majority, or if he draws a cheque before coming of age, even though the latter is post-dated to a time after he has come of age, no action can be maintained on the instrument, even by a holder for value (*Hutley v. Peacock*, 1913, 30 T.L.R. 42). Where there are several persons jointly named in a bill, as drawers, acceptors, or indorsers, and one of them happens to be an infant, though the infant cannot be sued, the other persons are liable, and an action may be instituted against them, the name of the infant being excluded. See *Wauthier v. Wilson*, 1912, 28 T.L.R. 239. The defence of infancy will not prevail if the infant has induced another party to enter into a contract with him by representing himself to be of full age. Infancy is a privilege, and cannot be abused. But in some respects an infant has a distinct advantage. If he becomes the holder of a bill he is perfectly entitled to sue upon it. He can, moreover, be authorised to act as an agent and have authority to affix his name to a bill. He does not, of course, become liable personally upon the bill—the liability is that of his principal. It must not be imagined that the fact of an infant's signature in any way destroys the validity of a bill, if such signature happens to be placed thereon. "Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto" (sect. 22, ss. 2).

Married Women.

The incapacity of a married woman has been removed by the Married Women's Property Act, 1882. She can now draw, accept, or indorse a bill just as though she were a single woman, and be liable upon it. If, however, she is sued and judgment obtained against her, the judgment can only be enforced against her separate estate. The form of the judgment against a married woman was settled in the case of *Scott v. Morley*, 1887, 20 Q.B.D., 120. Since the passing of the Married Women's Property Act, 1893, it is immaterial whether she was or was not possessed of separate estate at the date of the signing of the bill. The capacity of a married woman to contract is not yet so extensive in Scotland as in England, in spite of the Married

Women's Property (Scotland) Act, 1881; and reference upon this matter must be made to Scottish law. (See particularly the case of *Galbraith v. Provident Bank, Ltd.*, 1900, 2 F. 1148.)

Corporations and Companies.

The capacity of a corporation or of a company to contract depends generally upon the purposes for which it is formed, as set forth in the statute, charter, or memorandum of association by which it is constituted. If it exceeds its powers in this respect it is said to act *ultra vires*, and any such contract entered into is absolutely void. Speaking generally, however, it may be laid down that a corporation formed for the purposes of trading has capacity to incur liability upon bills of exchange. In other cases the capacity must be expressly given.

Lunatics and Drunken Persons.

The contracts of a lunatic are voidable and not void. Consequently lunacy may be set up as a defence to a bill, unless the bill was given during a lucid interval, or the transaction ratified during such interval. But the defence of lunacy is only available between immediate parties. It is of no avail against a holder in due course. Complete drunkenness is also a defence against an immediate party in the same way as lunacy is, and even partial drunkenness may be, if such drunkenness is induced by fraud or in any way taken advantage of by another party to the bill.

Agent.

The authority of an agent to draw, accept, or indorse a bill depends upon the general law of Agency, and is a question of fact. Agents are divided into three classes—special, general, and universal. A special agent is one who is appointed for a particular purpose, and he is therefore invested with limited powers. He has no authority to bind his principal in any other matter than that for which he is engaged, and the persons who deal with him are bound to ascertain the extent of his authority (*Sandeman v. Scurr*, 1860, L.R., 2 Q.B. 86). A general agent is one who has authority to do anything which comes within the limits of the position in which he has been placed by his principal, and who binds the principal by his acts done whilst in that position. For example, if a general agent is placed in management of a house of business, he has an implied authority to bind his principal by doing anything which falls within the ordinary scope of that business. And it makes no difference as far as third parties without notice are concerned, even though the principal has privately limited the

authority of the agent, and the agent violates the orders given to him by the principal—the principal is bound by his agent's acts (*Smethurst v. Taylor*, 1844, 12 M. & W. 546). A universal agent is one whose authority is unlimited. Such an agent has power to bind his principal by any act which he does, provided the same is legal and agreeable to the law of the land. An illustration of the three classes of agents is seen in the case of a principal who carries on a number of different businesses. A universal agent binds the principal by any act done in connection with any of the different businesses carried on. A general agent can only bind the principal by acts done in the particular business in which he is engaged. A special agent has no authority to bind the principal by anything done outside the particular duties imposed upon him.

It is obvious, therefore, that the utmost care is required in dealing with persons who profess to act as agents on behalf of their principals. A prudent person will always require to be satisfied that the alleged authority has been given. This is not easy in every case. An agent may be appointed either verbally or in writing. (If he is appointed to enter into a contract under seal he must be appointed by deed.) When a written authority is produced, any person contracting with an agent must judge of the sufficiency of the authority. When the authority is declared to be verbal, all the circumstances of the case must be examined, and any previous dealings carefully considered. It must be remembered that a principal may always ratify the acts of his agent, even though done in excess of authority, and such ratification will cure any initial defect.

Care in Dealing with Agents.

When an agent signs a bill of exchange, either as drawer, acceptor, or indorser, he must signify the capacity in which he does so, otherwise he will make himself personally liable upon the instrument. And the signature must not be such as merely to describe him in his capacity as agent, or as filling a representative character, for this does not exempt him from personal liability. Thus, if the drawing, acceptance, or indorsement is in this form, "J S, Manager," the word manager is descriptive of J S, and he is personally liable. The same rule applies if the signature is "C, agent," or "D, executor of E." C and D are liable, though in the latter case liability would be avoided if some such words were added as "without recourse against me

How an Agent Signs.

personally." But if the drawing, acceptance, or indorsement is given in the following or a similar form, " X & Y, Limited, J S, Manager," or " For the X Railway Co., J S, Secretary," and J S is acting within the scope of his authority, he is not personally liable at all, but his principals are bound by the signature. See the cases of *Chapman v. Smethurst*, 1909, 1 K.B. 927, and *Landes v. Marcus*, 1909, 25 T.L.R. 478. The authority of an agent is sometimes indicated by the use of the words " per pro.," which are an abbreviation of *per procurationem*. These words signify that permission has been granted by one person to another, allowing the latter to act or sign on behalf of the former. The " per pro." should be prefixed to the principal's name, thus : " Per pro. John Brown (principal), J. Jones (agent)." This is the usual form in England ; whereas in Scotland the form is generally " J. Jones (agent), *per pro.* John Brown (principal)." In practice, it is not uncommon to see the form " *per pro.* J. Jones," adding the name of the principal as before. But this is confined to documents other than negotiable instruments. A banker could certainly regard the use of the words " per pro." prefixed to his own name by an agent as irregular. On this point the reader should carefully consult the wording of sect. 25 of the Act, which provides that " a signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority." The manager of a firm of insurance brokers gave cheques drawn " per pro." his employers, the plaintiffs, to the defendant in payment of his (the manager's) racing debts. There was full authority on his part to sign cheques in this manner for the purpose of the plaintiff's business. It was held that the plaintiffs were entitled to recover the amount of the cheques from the defendant, inasmuch as the defendant must be taken to have had notice that the cheques were signed for purposes outside the plaintiff's business (*Morison v. Kemp*, 1912, 29 T.L.R. 70). But if a master has had reason to suspect dishonest conduct on the part of a servant or agent who has had authority to sign cheques " per pro.," and has refrained from making full inquiry into the facts, he will be presumed to have ratified the acts of his servant and cannot claim the protection afforded by the section (*Morison v. London County and Westminster*

Bank, 1914, 3 K.B. 356). See also *Crumplin v. London Joint Stock Bank*, 1913, 30 T.L.R. 99. Questions connected with this point really depend very much upon the special facts of the case. It need scarcely be added that an agent duly appointed has no power to delegate his authority to another agent appointed by himself.

If an agent exceeds his authority in signing a bill of exchange, what remedy has the holder of the bill? It has been just pointed out that if an agent signs merely as "A B, agent," the word agent is descriptive, and A B is personally liable. But what is the position if the signature is in such a form as to show that the agent represents himself as acting on behalf of another person? The answer is supplied in part by sects. 23 and 24 of the Act; and also by the general law applicable to agency. "No person is liable as drawer, acceptor, or indorser of a bill who has not signed it as such" (sect. 23). This includes signature by a duly authorised agent. If the agent had no authority the principal cannot be bound. Again "where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority. Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery" (sect. 24). The principal, therefore, is not bound, and the agent is not bound either, on the bill, for it does not in reality bear his own signature, but that of the principal for whom he purports to be agent. The only remedy is an action for damages against the agent for a false representation of authority. It should, moreover, be noted that if the name of a person is signed to a bill "per pro.," without authority and with intent to defraud, the party who does this is guilty of forgery under the Forgery Act, 1913 (3 and 4 Geo. V, c. 27).

Remedy Against Agent.

The capacity of partners, so far as bills of exchange are concerned, depends upon the general law of Partnership, just as the capacity of agents depends upon the law of Agency. In general, any act of a partner, which is done within

Partners.

the scope of the partnership business, and in the ordinary course of business, is binding upon all the other partners, unless the person with whom the partner deals actually knows that the particular act is forbidden. In fact, every partner is an agent for the firm and his other partners for the purpose of the partnership, and all the ordinary rules of agency apply to his acts. His position is that of a general agent. But for those acts which are outside the scope of the partnership business, the other members of the firm are not liable, unless there is a subsequent ratification. It follows, therefore, that if a partnership is a trading one, any partner may bind his firm by drawing, accepting, or indorsing bills of exchange, or making or indorsing promissory notes. But it must be done in the name of the firm. If a partner does any of these things in his own name he is personally liable upon the bill or note (*Owen v. Van Uster*, 1850, 10 C.B. 318; *Edwards v. Barnard*, 1886, 32 Ch.D. 447). But if the firm carries on business in the name of the individual partner who draws, accepts, or indorses a bill of exchange or promissory note, the drawing, accepting, or indorsing is an act for which the firm is *primâ facie* liable (*Yorkshire Banking Co. v. Beatson*, 1880, 5 C.P.D. 109). As a firm of solicitors is not a trading partnership, no partner in the same has authority to bind his fellow partners by dealing with bills of exchange or promissory notes (*Hedley v. Bainbridge*, 1842, 3 Q.B. 316). It appears, however, that although a member of a non-trading partnership cannot bind his fellow partners by drawing, accepting, or indorsing bills, the property in them may be passed on to a third party by his indorsement in the firm name. It is only during the existence of the partnership that the question of the capacity of one member to bind the other partners can arise. No member of a firm is bound by any contract until a partnership is formed, nor after the partnership is dissolved, except that, by sect. 38 of the Partnership Act, 1890, it is provided that, after the dissolution of a partnership, the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise. But the firm is in no case bound by the acts of a partner who has become bankrupt, so far as concerns acts done by him after he has become bankrupt. Thus, if a bill was accepted in the firm's name

before the date of the bankruptcy, but fell due after the date of the bankruptcy, the firm would be liable upon the document. This last proviso, however, does not affect the liability of any person who has after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

Assumed Name.

It has been already stated that certainty is required in all respects when dealing with bills of exchange, and that all the parties must be clearly designated in order to fix them with liability. But there is one point in connection with this necessity of certainty that must not be overlooked. A person may draw, accept, or indorse a bill in an assumed name. If this is done and the identity of the person is clearly established, liability is incurred just as though the signature had been made in the correct name.

Signature Obtained by Fraud as to Nature of Document.

In considering the capacity of parties to a bill of exchange, and their liability in respect of it, which is entirely dependent upon their signing the instrument as drawer, acceptor, or indorser, it is necessary to notice the words " as such " contained in sect. 23. The person who signs a bill must have signed it as a bill, and not have been induced by any fraud to put his name to an instrument which he thought was something totally different. Thus, in the case of *Foster v. Mackinnon*, 1869, L.R., 4 C.P. 704, an old man of feeble sight was induced to sign his name on the back of a bill, being told that it was a guarantee which he had promised to sign. The bill was negotiated and came into the hands of a holder in due course. As it was found as a fact that the defendant had acted without negligence, it was held that he was in no way liable upon the bill. This case was followed in *Lewis v. Clay*, 1898, 67 L.J., Q.B. 224, where a joint maker of a promissory note had been fraudulently induced to sign a document in the belief (without any negligence on his part) that he was merely witnessing the signature of the other joint maker.

CHAPTER III

CONSIDERATION

EVERY contract, not being a contract under seal, requires a consideration to support it, and bills of exchange are no exception to this rule, though there is this difference when it becomes a question of suing in a court of law. In the case of an ordinary contract, the plaintiff must prove the existence of a consideration; when an action is brought upon a bill of exchange, it is for the defendant to prove that there was no consideration, if this is the defence set up. Considerations are of two kinds, good and valuable. A "good" consideration consists in natural love and affection. This is not sufficient to support a simple contract. A "valuable" consideration has been defined in *Currie v. Misa*, 1875, L.R., 10 Ex. 162, as "some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other." More shortly it may be defined as some return or equivalent for a promise made or an act done to show that the promise was not made gratuitously. By the Act of 1882 "valuable consideration for a bill is constituted by

Definition of Consideration.

"(*a*) Any consideration sufficient to support a simple contract;

"(*b*) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time" (sect. 27).

The consideration must be of some value, however slight. Adequacy of value is not required, and very slight acts may amount to consideration. Thus, forbearance to sue in an action is a valuable consideration, even though the claim is doubtful; so also is a *bonâ fide* compromise of a non-sustainable action. Other examples are the giving of a cross acceptance, the forbearance of a debt owing by a third party, and a debt barred by the Statute of Limitations. See *Elkington v. Cooke-Hill*, 1914, 30 T.L.R. 670. But inadequacy of value may induce the court in certain cases to set aside transactions relating to bills of exchange, where the inadequacy is such as to lead to a

Requisites of Consideration.

presumption of fraud, or where the terms are so harsh and unconscionable as to entitle a party to relief. This is the most general defence set up in money-lending cases, where a bill or a promissory note has been given as security for the loan, and is specially provided for by the Money-lenders Act, 1900. On the other hand, a mere moral obligation will not constitute a consideration, nor will an action lie upon a bill, at least as between immediate parties, when the consideration is tainted with fraud or illegality. It may be noted here, although the subject will be discussed more fully in a later chapter, that any defence of the kind suggested, namely, inadequacy of consideration, failure of consideration, fraud, or illegality must be specially pleaded in an action upon a bill.

Value Given at any Time.

By sect. 27, ss. 2 of the Act, it is enacted that "where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time." The holder of a bill means the payee or the indorsee who is in possession of it, or the bearer thereof. Two illustrations may be given to make this quite clear. A owes B a sum of £100. In order to pay B, A asks C to draw a bill which A accepts, making B the payee. The existing debt is the consideration, and although C never receives any value, yet he is liable to be sued by B, or by any indorsee, for the £100. But C could not sue A on the bill, since there was no consideration existing between them. Again, A draws a bill on B, which B accepts, without any consideration. The bill is transferred to C, also without any consideration, and C transfers it for value to D. Value having been given, D can sue any of the parties A, B, or C, though as between themselves there would be no right of action at all. If, in the last example, D had afterwards transferred the bill, even gratuitously, to E, E would have had the same right of action upon the bill as D, though as against D no right would exist. It is not necessary when a bill passes through various hands without consideration, provided that value has been given at some stage, that the names of the parties between whom the consideration existed shall appear upon the bill. Thus, a bill given without consideration is indorsed in blank and handed to a transferee who subsequently transfers it to another person for value without putting his name to it. As the bill is payable to bearer it is not necessary for the last transferor to indorse it, but

the transferee is the holder, and as such holder he is able to sue any person whose name appears upon the bill, even though he and his immediate transferor are not parties to the bill.

Where the holder of a bill has a lien upon it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien (sect. 27, ss. 3). But in the absence of evidence to the contrary, the holder for value is presumed to have taken the bill for its full value, and not as a mere security. See "Discount and Pledge," page 59.

Holder with Lien.

Many bills are drawn, accepted, and put into circulation without any consideration passing, the various signatories lending their names to oblige their friends. Such bills are called "accommodation bills"—also commonly known as "fictitious bills," "kites," and "windmills"—and the persons who draw, accept, or indorse them are called "accommodation parties." Until value has been given, as already pointed out, no party is liable to pay the amount of such a bill; but directly value has been given a holder for value has a right to proceed against any of the signatories, even though he is aware of the fact that the instrument is only an accommodation bill. An accommodation bill is discharged when it is paid by any person who is in reality, though not formally, the principal debtor. As to the liability on a joint promissory note, where one of the makers is an accommodation party, see *Godsell v. Lloyd*, 1911, 27 T.L.R. 383.

Accommodation Bills.

So far the person who has been mainly considered as having a right of action on a bill is the holder, or the holder for value. Neither of these parties occupies so favourable a position as a "holder in due course," who is defined as "a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely,

Holder in Due Course.

"(*a*) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact.

"(*b*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it" (sect. 29, ss. 1).

In order, however, to obtain his full privileges he must observe all the

points contained in the definition. On this question the reader should consult the case of *National Park Bank v. Berggrew & Co.*, 1914, 110 L.T. 907. The fact of a bill being overdue or not will generally appear upon its face. As to notice, this means actual notice, that is, a knowledge of the facts connected with dishonour or any defect, or a suspicion that something is not correct, together with a wilful disregard of all the means of knowledge at one's disposal. Moreover, any irregularity in the form of the bill ought to put the holder upon inquiry, since no bill is complete and regular on the face of it if it is lacking in any material particular. Mere negligence will not disentitle a holder in due course to claim upon the bill, for "a thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not" (sect. 90). A holder in due course has a *primâ facie* right against each and every party to a bill, and he is able to pass on all his rights to a transferee, whether for value or not, if he is not himself a party to any fraud or illegality affecting the bill.

The Act, by sect. 29, ss. 2, states that "in particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud." A person who takes a bill with notice of any of these defects does not become a holder in due course, and cannot recover the amount of it from the person defrauded or otherwise. If, as will appear elsewhere, any signature on the bill has been forged, no title to the bill can be made at all through the forged indorsement, and a holder in due course gains no special privilege in such a case.

Defects of Title.

In connection with the rights of a holder in due course it is necessary to bear in mind the provisions of sect. 30:—

Burden of Proof.

"(1) Every party whose signature appears on a bill is *primâ facie* deemed to have become a party thereto for value.

"(2) Every holder of a bill is *primâ facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent

> negotiation of a bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill."

For example, A draws a bill which B accepts. It is then transferred by various indorsements through the hands of numerous parties, and it eventually passes into the possession of X. If X gave value for it, he is a holder for value, and if he took it as described above, according to sect. 29, he is a holder in due course. X has a *primâ facie* right to sue any person whose signature appears on the bill. Should a defence of fraud, duress, or illegality be set up, X must show that subsequent to such fraud, duress, or illegality he gave value in good faith for the bill, and had no notice of anything irregular. His claim is then unimpeachable. Also if X, in such a case, transfers the bill to Y as a gift, Y has exactly the same rights as X, and is in the same position as to suing upon the bill, except that he cannot sue X, since there is no consideration existing between them. See *Talbot v. Von Boris*, 1911, 1 K.B. 854.

Validity of Defences as to Consideration.

It will have been seen that the defences available as to consideration being wanting for a bill are primarily open to immediate parties, but remote parties are in the same position if there is any privity existing between the immediate and remote parties. Thus, a total failure of consideration is a defence between immediate parties, but it is not a defence between remote parties, when the holder is a holder in due course. And it appears that partial failure of consideration is a defence *pro tanto* between immediate parties when the failure is an ascertained and liquidated amount, but not otherwise. It is in no case a defence between remote parties if the bill has got into the hands of a holder in due course.

Fraud and Illegality.

Fraud and illegality, as affecting the consideration, are good defences to set up in the case of bills of exchange, when they are in any way tenable. As to what constitutes fraud, reference must be made to the general law of Contract, and the same may be said as to illegality. If the fraud is such as would vitiate a contract, a bill of exchange founded on such a fraudulent consideration would be of no avail. There is, however, a limit to be placed upon this statement. Fraud or illegality

is, of course, a defence against an immediate party, but it does not constitute a defence against a remote party who is a holder in due course. When a bill is given for an illegal consideration, although it is voidable in the hands of immediate parties a holder in due course is entitled to sue upon it. Thus, if a bill (including a promissory note and a cheque) is given for a wagering or gaming debt the winner cannot sue the loser upon it. It is also clear law that a bill given to secure a gaming or wagering debt is void in the hands of a holder for value with notice of the transaction (*Woolf v. Hamilton*, 1898, 2 Q.B. 337). But if a bill is transferred for value to a third person who is unaware of the fact that it is connected with a gaming transaction, such third person can enforce payment. See *Hay v. Ayling*, 1851, 16 Q.B. 423. The illegality means illegality by the law of England, and it is immaterial if a bill is given in consideration of a transaction which is quite legal in the country where the debt is contracted, provided it is illegal in England (*Moulis v. Owen*, 1907, 1 K.B. 746). Thus, a bill is accepted in payment of a gambling debt contracted in a country where gambling is not illegal. The drawer sues the acceptor in England. He cannot recover on the bill. whatever his rights may be in an action for money lent. Similarly, where a cheque payable in England is obtained abroad by duress, the payee cannot maintain an action for the amount of the cheque in this country (*Société des Hôtels Réunis v. Hawker*, 1913, 29 T.L.R. 578, following *Kaufman v. Gerson*, 1904, 1 K.B. 591). But, as just pointed out, if such a bill is negotiated and transferred to a holder in due course, the acceptor cannot set up the illegality as a defence. See also *Robinson v. Benkel*, 1913, 29 T.L.R. 475, and *Nicholls v. Evans*, 1913, 30 T.L.R. 42.

CHAPTER IV

THE DRAWER

THE person who gives the order contained in a bill of exchange is called the drawer. The ordinary presumption of law is that he

Who is.

is the creditor of the person upon whom he draws, that is, that the drawee has funds in his hands belonging to the drawer which the latter is desirous of transferring to a third party, the payee, or to himself. The drawer must have capacity to contract, and he must sign, either personally or by his duly authorised agent. Until he has signed he is in no way liable upon the instrument, and he must sign the bill as such, that is, not believing it to be some other kind of document. If the signature is simply in the name of the drawer, he will be personally liable upon the bill to the extent named hereafter. If he acts in any representative capacity, such capacity must be clearly indicated on the bill in order to exclude personal liability (sect. 26). A corporation capable of contracting will draw a bill in the method authorised by its constitution, a partnership in the trade name of the firm. A signature in pencil has been held good (*Geary v. Physic*, 1826, 5 B. C. 324); and a lithographed or stamped signature, if put on by the person who is the drawer himself or by some one else acting by their authority, may be quite sufficient. (See *Ex parte Birmingham Bank*, 1868, L.R. Ch. 651.) But such a method of procedure is very undesirable. In all probability a banker who had to deal with a bill of this kind would require a verification of the signature. Instead of the signature in the case of a corporation, the affixing of the corporate seal will have the effect of a signature (sect. 91, ss. 2).

The general form of a bill of exchange, up to the point of its drawing, has been given in a previous chapter (see p. 15). It was

Form.

there stated that no special words are required to constitute a valid bill of exchange. The great point is to obtain the signature of parties. So, therefore, if a man signs in any part of the instrument he may be a drawer. Thus, if a bill is drawn "I A B direct you to pay," and the instrument is in the handwriting of A B, or of his duly authorised agent, A B is liable

as drawer. But it is very rare for the common form of a bill to be departed from. In many cases the drawer obtains a properly stamped paper, and writes out the whole himself, signing his name in the bottom right-hand corner. In other cases the bill may be drawn by another person and forwarded to the drawer for the purpose of obtaining his signature. It is not absolutely necessary that the signature of the drawer should be placed upon the bill before that of any other person, *e.g.*, the acceptor or an indorser. It may, in fact, be inserted at any time after issue. Of course, no person is bound to sign such a bill as drawer if it is sent to him, and no liability can attach in any way by reason of his refusal to do so.

The first method by which a person becomes liable upon a bill as a drawer is when he signs the same before it is issued, and when he is the only party to it. The second method is when he signs a bill sent to him as drawer, which is already filled up and probably contains one or more signatures, *e.g.*, those of the acceptor, or of an indorser. But liability as a drawer may be constituted in another way. By sect. 20 of the Act it is enacted "where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *primâ facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *primâ facie* authority to fill up the omission in any way he thinks fit." But the completion must be made within a reasonable time, and strictly in accordance with the authority given. If a signed blank stamped paper is given by one person to another, and the authority to fill the same is clearly stated, as between the parties to the bill when completed there is no liability attaching to the person who has signed it if the authority is exceeded. But if the bill is completed and negotiated to a holder in due course, the holder is entitled to enforce payment of the amount of the bill even though the authority has been exceeded and the limited time has elapsed. There must, however, be a negotiation in the strict sense of the term, that is, a transfer from one holder to another, in order to render the signatory of the document liable upon it. Thus, it is not enough for a person to whom an incomplete instrument has been given, with

Inchoate Instruments.

specific instructions as to whose name is to be inserted as payee, to make it payable to some other person. That payee cannot claim the amount of the bill from the signatory of the incomplete instrument, since there has been no negotiation of it, the payee himself being the only holder. This is well illustrated by the case of *Herdman v. Wheeler*, 1902, 1 K.B. 361, in which a promissory note was in question. There the defendant agreed to borrow a sum of £15 from A, and signed and handed to A a blank stamped paper which he authorised A to fill up as a promissory note payable to A, and for the sum of £15 only. The stamp, however, was sufficient to cover a sum of £30. A, in breach of his authority, fraudulently filled up the paper as a promissory note for £30 and made it payable to the plaintiff. He then handed it to the plaintiff who gave value for it without notice of A's breach of authority. A misappropriated the proceeds. In an action brought by the plaintiff it was held that the delivery of the note by A to the plaintiff was not a negotiation of the note so as to entitle the plaintiff to recover. In this case it was questioned whether the payee of a note could ever, under any circumstances, be the holder of it in due course. The authority of this decision, however, has been questioned in *Lloyds Bank v. Cooke*, 1907, 1 K.B. 794. The danger of dealing with incomplete documents of the nature of negotiable instruments is further illustrated by the cases of *Glenie v. Tucker*, 1907, 2 K.B. 507, and *Smith v. Prosser*, 1907, 2 K.B. 735.

The person who is primarily liable to pay the amount of a bill of exchange is the acceptor, as will be seen in the next chapter.

Liability.

But the drawee may refuse to accept, or having accepted may fail to pay at the stipulated time. Then the drawer becomes liable to the holder of the bill, just as any indorser is also liable. By drawing the bill, the drawer engages "that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken" (sect. 55, ss. 1 (*a*)). In any action on the bill the drawer "is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse" (sect. 55, ss. 1 (*b*)). If a bill is dishonoured after acceptance by non-payment and the drawer is compelled to pay it, he himself can sue the acceptor.

There is a method by which a drawer is able to limit his liability upon a bill of exchange, though this must affect the transfer of the same very considerably, seeing that a bill advances in value the greater the number of names, with no limitation of liability, upon it. This limitation is effected by the insertion of an express stipulation negativing or limiting his own liability to the holder. Thus, "Pay A or order without recourse to me," "Pay A or order sans recours," or "Pay A or order at his own risk," are instances in which the liability of the drawer is restricted. The rights of A are not affected in a general way, so far as negotiation of the bill is concerned, but the drawer is in no way liable to pay the bill to any holder at any time. This restriction of liability is also allowed to an indorser of a bill if he indorses in the same manner.

Limiting Liability.

It has been pointed out that the secondary liability of the drawer is dependent upon due notice of dishonour being given and proper proceedings taken upon the same. The drawer may, however, waive his rights to such notice. But this can only be done by inserting an express stipulation in the bill in the same way as for the purpose of negativing liability. Thus, words such as these, "notice of dishonour waived," will suffice to dispense with the notice. An indorser is able to waive notice of dishonour in the same manner as a drawer, by adding words to that effect to his indorsement.

Waiver of Notice of Dishonour.

CHAPTER V

THE ACCEPTOR

THE person to whom a bill of exchange is addressed is called the drawee, but directly the drawee has assented to the order of the drawer, that is, has expressed his readiness to pay the amount or a part of the amount of the bill, he becomes the acceptor, and the signification by the drawee of his assent to the order of the drawer is called the acceptance of the bill. It is essential that the acceptor and the drawee should be the same person. A bill cannot be addressed to one person and accepted by another, and liability as an acceptor is not constituted if such an acceptance is purported to be made, although it is quite possible that the person who purports to accept the bill may be liable as an indorser. Thus, if a bill is addressed to A, and B writes an acceptance on it, B is not liable as an acceptor. But it will be quite sufficient if an agent of the drawee accepts the bill, provided he is acting within the scope of his authority. Thus, if a bill is addressed to A & Co., and B, a partner in the firm, accepts it in the firm's name and also adds his own, this will be an acceptance of the firm, and not of B personally. So, also, if a bill is addressed to the X Co., Limited, it may be accepted by one or more of the directors signing it, that is, presuming the company has the capacity to contract, and describing themselves simply as directors. A bill was drawn upon and addressed to a limited company with the abbreviation " Ltd.," instead of " Limited," after the name of the company, and was accepted by " J W., T H W, and H B, Secretary," the first two being directors of the company. The name of the company was not mentioned in the acceptance. It was held that the name of the company was sufficiently " mentioned " in the bill, so as to comply with the requirement of sects. 63 and 77 of the Companies (Consolidation) Act, 1908, and that the signatories of the acceptance were not personally liable upon the bill (*Stacey & Co. v. Wallis*, 1912, 106 L.T. 544). In other cases such a signature, being descriptive, would not free the signatories from personal

Who is.

liability upon the bill. The drawee must be named or indicated with reasonable certainty, just like other parties to the bill. There may be two or more drawees, and consequently two or more acceptors of a bill, whether they are partners or not, but an order cannot be addressed to two drawees in the alternative, nor to two or more drawees in succession. The existence of alternative or successive drawees would give rise to difficulties as to recourse if the bill was dishonoured.

The requisites in form of a valid acceptance are as follows: (*a*) The acceptance must be written on the bill and signed by the drawee, though it is not essential that any words should be added, provided the signature is affixed; (*b*) The acceptance must not signify that the drawee will perform his promise by any other means than the payment of money (sect. 17). The usual method of accepting is for the drawee to write the word "Accepted" across the face of the bill and afterwards to add his signature, but the signature must be there in any case. The section says that the acceptance must be written on the bill, and does not specially state that it is to be placed on the face of it. It is, therefore, assumed that the drawee may accept a bill by writing an acceptance upon the back of it (*Young v. Glover*, 1857, 3 Jur. 637).

Form.

There is no special time fixed for obtaining the acceptance of a bill, but it is always advisable that there should not be any undue delay. In the vast majority of cases the drawer will draw a bill and forward it to the drawee for acceptance at once. The drawee will accept and return the bill to the drawer, and the latter will then either retain it till maturity or discount it. But it is not imperative that this order of things should be observed. The acceptance may be affixed even before the bill has been signed by the drawer, or whilst it is otherwise incomplete. And the acceptance is equally good if given when the bill is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment. But "when a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance" (sect. 18, ss. 3). But a bill should, in any case, be presented for acceptance as soon as possible, because, if the acceptance is refused, the parties

Time for Acceptance.

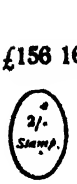
to the bill, other than the drawee, become liable at once, even though the bill has not matured. Also if a bill is payable after sight, presentment for acceptance is necessary within a reasonable time in order to fix the date of the maturity of the instrument. What is a reasonable time is a question of fact depending upon the particular circumstances of each case.

There are two kinds of acceptance, general and qualified.

General Acceptance. The former assents without qualification to the order of the drawer. In practice, the acceptance is written across the middle of the face of the bill, and is as follows:—

Manchester,
Sept. 23rd, 1918.

£156 16s. 6d.



One month after date pay to me or to my order the sum of One hundred and fifty-six pounds sixteen shillings and sixpence for value received.

Alfred Booth.

To Mr. George Hardy,
Liverpool.

It is by no means uncommon for the acceptance to be written, printed, or stamped in coloured ink, generally red, and not infrequently the date of acceptance and the due date of payment of the bill are also inserted. An acceptance is still general even though an address is added to the signature, or a place of payment specified. For example,

Accepted,
George Hardy, 427 North Street, Liverpool,

or

Accepted, payable at the Blankshire Bank,
George Hardy.

The value of a general acceptance consists in this, that the holder of the bill can sue the acceptor upon it without making any presentation of the bill to him. But he will lose his appropriate remedies against all the other parties to the bill unless the presentation is made at the place indicated in the acceptance, or, if no particular place is indicated, at the place of business or the residence of the acceptor according to circumstances (sect. 45).

A qualified acceptance varies the effect of the bill as drawn,

and does so in express terms. There are five kinds of qualified acceptances set forth in sect. 19 of the Act. They are:

Qualified Acceptance.

(*a*) Conditional, that is, an acceptance dependent upon a condition stated in the acceptance, *e.g.*, "Accepted, payable when in funds."

(*b*) Partial, that is, an acceptance to pay a part only of the amount for which the bill is drawn, *e.g.*, a bill drawn for £500 and an acceptance as follows—"Accepted for £100 only."

(*c*) Local, that is, an acceptance to pay at a particular place and there only, *e.g.*, "Accepted, payable at the Blankshire Bank, and not elsewhere." But an acceptance, "Payable at the Blankshire Bank," is a general acceptance.

(*d*) Qualified as to time, *e.g.*, when a bill is drawn at three months and the acceptance is, "Accepted, payable at six months."

(*e*) An acceptance of some one or more of the drawees, but not of all, *e.g.*, a bill drawn on A, B, and C, and accepted by A and B only.

If the acceptor of a bill desires to qualify his acceptance he must do so on the face of the bill in clear and unequivocal terms, so that any person taking the bill could not, if he acted reasonably, fail to understand that it was accepted subject to an express qualification (*Decroix v. Meyer*, 1890, 25 Q.B.D. 343). The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance he may treat the bill as dishonoured by non-acceptance. If he takes a qualified acceptance without the express or implied consent of the drawer or an indorser, such drawer or indorser is discharged from his liability on the bill (sect. 44). But where a drawer or indorser receives notice of a qualified acceptance, he is deemed to have assented thereto unless he expresses his dissent within a reasonable time. A notice of a qualified acceptance should be in some such form as the following:—

Right to Refuse Qualified Acceptance.

London, Sept. 2nd, 1918.

Take notice that a bill of exchange for £100 drawn by you (or indorsed by you) under date the —— on A B has been accepted by him for £50 only, and that you are held responsible for the balance and expenses.

C D.

In the case of a qualified acceptance making a bill payable at a

certain place, and at that place only, there must be presentment for payment at that place to charge the drawer and the indorsers Omission to present the bill does not discharge the acceptor.

Inchoate Instruments.

It was pointed out in the last chapter that a blank stamped paper may be signed by a person, and the signature afterwards used by the holder as that of the drawer, the acceptor, or the indorser of a bill (see page 35). The remarks there made as applicable to the drawer are also applicable to the acceptor. See sect. 20 of the Act.

Liability of Acceptor.

The acceptor is always the person who is primarily liable upon a bill, and he is liable by reason of his acceptance, his signature being a *primâ facie* acknowledgment that he has in his hands funds which the drawer is entitled to call upon him to pay in the manner ordered. But until he has signed he is not liable upon the instrument in which he is named as drawee, although he has funds of the drawer in hand. The fact that the drawee has funds in his hands available for the payment thereof does not operate as an assignment of the funds in England and Ireland. In Scotland, however, "where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee" (sect. 53). And similarly a cheque granted for value and presented for payment operates as an assignment of any funds in the hands of the bank up to the amount of the cheque (*British Linen Co. v. Carruthers*, 1883, 10 Rettie, 923). By accepting a bill the acceptor engages that he will pay it according to the tenor of his acceptance, that is, if the acceptance is general he undertakes to pay the bill as it stands, if the acceptance is qualified and the qualified acceptance has been taken, he engages to pay what he has undertaken to do by his qualified acceptance. And just as a drawer is precluded from denying certain facts, the acceptor of a bill cannot deny to a holder in due course,

(*a*) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;

(*b*) In the case of a bill payable to drawer's order the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(*c*) In the case of a bill payable to the order of a third person,

the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement (sect. 54, ss. 2).

A very slight consideration will show how necessary it is that an acceptor should be precluded from denying these facts, otherwise legal proceedings, when they have to be taken, might be protracted indefinitely. In the ordinary course of things the drawee does not accept a bill until the signature of the drawer has been placed upon it. If, therefore, he has any doubts as to the existence of the drawer, the genuineness of his signature, and his capacity or authority to draw the bill, he should refuse to accept it. By accepting he tacitly admits that these things are correct. But an acceptor cannot be estopped from denying certain facts which would, in the ordinary course of things, take place after his own acceptance. So, therefore, as indorsements are not generally placed upon a bill until after acceptance, the acceptor cannot be held to warrant, and cannot be precluded from denying, the regularity of what has taken place after the placing of his own signature upon it. Owing to the fact that a bill may be put into circulation before a drawer's signature is upon it, an acceptor may under certain circumstances find himself placed in a serious position as to defending an action brought against him. It is, therefore, extremely unwise for any person to accept a bill which has not the name of the drawer already upon it.

It has been stated that a bill must be accepted by the person upon whom it is drawn, if he is a single individual, by any one or more of the partners in a firm if it is drawn upon a mercantile partnership, and by all the persons named as drawees if they are not partners; otherwise the bill is dishonoured for non-acceptance, though in the last named instance those who accept are bound by such acceptance. There is, however, another way in which a person can be liable on a bill, and that is as an acceptor for honour suprà protest. By sect. 15 of the Act "the drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit."

Acceptor for Honour.

The form in which a bill of exchange is drawn when there is a referee in case of need named is generally as shown below.

The acceptor for honour or the referee in case of need, when an acceptance is given by either of them, writes across the bill "Accepted S. P." (*i.e.* suprà protest), or "Accepted for the honour of A B," naming the person for whose honour the bill is accepted. If no name is mentioned the acceptance is considered to be for the honour of the drawer. The special points connected with Acceptance and Payment for Honour are referred to in Chapter XIV.

London, Oct. 1*st*, 1918.

£115.

Fourteen days after date pay to order of Messrs. J. P. Andrews & Co., one hundred and fifteen pounds.

Value received.

Smith, Jones & Co.

To Messrs. Brown, Swift & Co.,
Bankers,
London.

In case of need with
The Blankshire Banking Co., Limited, London.

Apart from the defences of fraud and illegality, the acceptor of a bill cannot resist payment at maturity, if all the proper steps have been taken, which steps will be noticed hereafter, unless the bill is an accommodation bill and no value has been given for it at any time. Thus the drawer of an accommodation bill cannot sue the acceptor. But if the bill has got into the hands of a third party, and there has been consideration given by that third party, or by any other person from whom he has taken it, the fact that the acceptor has received nothing in consideration for his acceptance will afford no defence to an action on the bill.

Defences.

CHAPTER VI

THE PAYEE

EVERY bill of exchange must be made payable to some person, and this person is called the payee. If a bill is drawn by A and accepted by B it may be made payable in various ways—either to C, a third person, or to A the drawer, or to bearer. A bill may be drawn payable to, or to the order of the drawee (sect. 5), and it will then be addressed "Pay to your own order." This is a rare occurrence, and can only happen when the drawee is a person acting in two different capacities, as if he is in business on his own account, and also is acting as agent for some other person interested in the bill. But such a bill cannot be enforced until the drawee has indorsed it away.

Who is.

The payee must be named or otherwise indicated in the bill with reasonable certainty. It is not absolutely essential, however, that he should be described by name. Thus, the payee may be denoted as the "Treasurer of the X Society." And extrinsic evidence is always admissible to identify a payee thus designated, if there is any doubt as to the identity. The Act itself provides that a bill may be made payable to the holder of an office for the time being. So again, a bill is not invalid because the name of the payee is misspelt, or the payee wrongly designated (sect. 32). In indorsing such a bill, however, (and the payee's name must be indorsed to make him liable upon the instrument), the payee should indorse the bill with the name by which he is described and afterwards add his proper signature. Thus, a bill is made payable to Thomas Smythe, whereas the correct name of the payee is Thomas Smith. The proper indorsement is "Thomas Smythe, Thomas Smith." It is not quite certain how a married woman, supposing that she is the payee of a bill of exchange, should indorse it, if it is made payable in some such form as to "Mrs. Alfred Johnson." The practice is to indorse such a bill "Mary Johnson, wife of Alfred Johnson." In the case of a cheque, which is a bill of exchange (sect. 73), if it is drawn payable to "Mrs. Jones," a banker will refuse, generally, to accept an indorsement "Mrs. Jones." The payee must indorse "M. Jones," or "Mary

Must be Designated.

Jones," or some such similar name. As to a bill made payable to a holder of an office, the correct way to indorse the bill is to sign with the name of the person, and to add the name of the office he holds. Thus, if a bill is drawn payable to "The Treasurer of the X Society," the proper indorsement is "A B, treasurer of the X Society." If the amount of the bill is not to be received personally by the treasurer, he should add the words *sans recours*. But although an incorrectly described payee may be identified, no evidence is admissible to show what payee is intended when a blank space is left as "Pay —— or order." Such a bill is construed as a bill payable to the order of the drawer, and it is the drawer who must indorse it away (*Chamberlain v. Young*, 1893, 2 Q.B. 206).

Alternative Payee.

A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. Although, therefore, alternative acceptors are not permissible, alternative payees may be. If the payees are named jointly, all of them must indorse the bill in order to effect a valid transfer of it, unless, of course, they are partners in business, and one of them has authority to indorse for the whole; if they are named in the alternative, the indorsement of any one or more of them will be sufficient to pass the bill. But in the last named case those persons alone will be liable upon the bill whose names are indorsed thereon.

Capacity of Payee.

It is always advisable that every party whose name appears upon a bill of exchange should have the capacity to contract. But this matter is not so important in the case of the payee as in that of the drawer or the acceptor. If a bill is made payable to an infant or to a corporation which is incapable of contracting, the bill is not invalid. Either the infant, or the corporation by its proper officer, can indorse the bill and transfer it to another party, and such party will not be at all prejudiced by the fact that the bill has passed through the hands of and been indorsed by a person not possessing contractual powers. He will be able to sue the acceptor or the drawer, as the case may be, if he so wishes; but he has no remedy at all against the payee.

It has already been pointed out that for convenience in business a drawer and an acceptor are precluded from denying certain facts connected with bills of exchange. As far as the payee is concerned neither of them can deny his existence, nor his capacity

to indorse at the time of the drawing or the acceptance of the bill. This is because in all ordinary cases the name of the payee will be inserted in the bill before the time of the drawing or the acceptance, and the act of signing a document containing the name is a sufficient acknowledgment of the existence and the capacity of the payee. But the genuineness and the validity of the indorsement of the payee is a different matter, and in an action on the bill either the drawer or the acceptor is at liberty to adduce evidence to show that the indorsement is forged or irregular.

Existence of Payee.

"Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer" (sect. 7, ss. 3). The insertion of the name of a fictitious or of a non-existing person is altogether different from the misspelling of a name or the giving of a wrong description of a person. If such a name is inserted the bill is payable to bearer, and, as will be explained more fully later, the bill then requires no indorsement. In many cases it is easy to tell who is a fictitious or a non-existing person, *e.g.*, Robinson Crusoe, or Napoleon I. The mere fact that the payee had recently died would not be sufficient to allow the bill to be treated as one payable to bearer. The bill would probably form a part of the deceased man's estate, and would be payable to his legal personal representative. But a wider meaning has been given to this section by the decision of the House of Lords in the leading case of *Bank of England v. Vagliano*, 1891, App. Cas. 107. In that case a firm of the name of Petridi carried on business at Constantinople, and a person named Vucina was in the habit of drawing bills upon Vagliano payable to the order of Petridi. A clerk in the employ of Vagliano forged a number of bills making Vucina the drawer and Petridi the payee, and procured genuine acceptances of Vagliano to the same. He afterwards forged the indorsement of Petridi, making it an indorsement to a non-existing person, took the bills to the Bank of England, and received payment across the counter. When the forgeries were discovered a question arose as to who was to bear the loss involved, the Bank or Vagliano. Apart from the question of estoppel, which does not affect the present point, the case turned upon the meaning of the word "fictitious," and it was held that a fictitious or a non-existing person included a real person who never had nor was intended to have

Fictitious Payee.

any right to the bills, and that as the name of Petridi was inserted as payee by way of pretence merely, and with no intention that the firm should ever have any rights in the bills, the bills were payable to bearer and the Bank was perfectly correct in treating them as such and paying the money over the counter to the bearer.

Payee Same as Drawer.

When a bill is drawn to the order of the drawer, the drawer is also the payee, and he must indorse the bill before it can be negotiated. And when a bill is drawn without any name being inserted as payee, and is negotiated, not only may the drawer indorse it as being payable to himself, but any holder for value may insert his own name in the bill and sue upon it. Of course, if there is no name of a payee inserted, there must be a blank left for such name, otherwise the instrument would not be a bill of exchange.

Bearer.

All bills which are not payable to a specified person, or which are payable to a person who cannot be identified, are bills payable to bearer. A bearer may or may not become a party to a bill. There is no necessity, in order to render the bill transferable, that he should indorse it; and unless his name appears thereon he cannot be sued in case the bill is dishonoured, nor can he be sued upon the consideration in respect of which he transferred the bill, unless either the bill was given in respect of an antecedent debt, or unless it appears that the transfer was not intended to operate in full and complete discharge of such liability.

Liability of Payee.

The liability of the payee of a bill who indorses it is the same as that of any indorser or the drawer, if the acceptor fails to pay it at maturity. Until he has indorsed it, the payee is not liable upon the bill. But if a bill is drawn payable to "John Brown or order," a subsequent holder could compel John Brown to indorse it, and he would thereupon become liable. The method of enforcing payment will be dealt with fully in a subsequent chapter.

CHAPTER VII

ISSUE AND NEGOTIATION

JUST as a deed is of no legal effect until it has been delivered, so a bill of exchange does not effectually bind any of the parties to it, except as shown hereafter, if it comes into the hands of a person through some fraud before it has been issued. "Issue" is defined as the first delivery of a bill or note complete in form to a person who takes it as a holder. And so, if a person puts a blank acceptance in his desk, and the acceptance is stolen and filled in as a bill, such person will not be liable upon the bill, as it was never delivered by him for the purpose of being converted into a bill (*Baxendale v. Bennet*, 1878, 3 Q.B.D. 525). Reference may be usefully made to the recent case of *Smith v. Prosser*, 1907, 23 T.L.R. 597, in which a promissory note was dealt with.

Issuing a Bill.

"Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto. Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable" (sect. 21, ss. 1). "Delivery" is defined as transfer of possession, actual or constructive, from one person to another. "In order to make the property in bills pass, it is not sufficient to indorse them. They must be delivered to the indorsee or to the agent of the indorsee. If the indorser delivers them to his own agent, he can recover them; if to the agent of the indorsee, he cannot recover them" (*Ex parte Cote*, 1873, L.R., 9 Ch. 27). Thus, a drawee receives a bill from the holder, and writes an acceptance on it. He afterwards hears that the drawer has become bankrupt, cancels his acceptance, and returns the bill to the holder. He is entitled to revoke his acceptance, since he has never delivered the bill so as to make himself liable upon it (*Bank of Van Diemen's Land v. Bank of Victoria*, 1871, L.R., 3 P.C. 526). But if the acceptor, after writing his acceptance on the bill, had given notice of his acceptance to the holder, such acceptance would be complete and irrevocable.

Delivery.

"As between immediate parties, and as regards a remote party other than a holder in due course, the delivery (*a*) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be; (*b*) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill" (sect. 21, ss. 2). But as soon as the bill gets into the hands of a holder in due course, a valid delivery of the bill by all parties prior to him so as to make them liable is conclusively presumed. And, moreover, where a bill is no longer in the possession of a person who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved. It has already been pointed out that no evidence of a contemporaneous oral agreement to renew a bill can be admitted, on the ground that its effect would be to contradict the terms of the written instrument. (See page 19.)

Delivery.

The special characteristics of negotiability have been explained in the Introduction, and it has been pointed out that bills of exchange pass current, in commerce, instead of cash. "A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill" (sect. 31); and the holder signifies the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof. A holder may or may not be a person entitled to sue upon the bill, according as to whether value has or has not been given for it at any time. And for this reason it is always necessary to bear in mind the distinction between a holder and a holder in due course. The latter has been already defined, and in order to keep the definition clearly in view reference should be made to sect. 29 of the Act.

Negotiation.

When a bill is drawn payable to bearer, negotiation is made by simple delivery. There is no indorsement necessary. A bill is payable to bearer when it is made so payable, or when the payee is a fictitious or a non-existing person (*supra*), or when the only or the last indorsement is an indorsement in blank. If, therefore, to give one illustration only, the wording is "Pay bearer," the holder on becoming possessed of the bill may pass it on to any person without an indorsement of any kind. And when a bill is, on the face of it, payable to bearer, it remains payable to bearer, except that the holder may alter it on the face

Bill to Bearer.

thereof from bearer to order : *Atwood v. Griffin*, 1826, 2 C. & P. 368. (But a change in the tenor of a cheque payable to bearer on the face of it cannot be effected by indorsement.) In practice, a transferee will often refuse to take a bill unless it is indorsed by his transferor, but there is no legal necessity for the indorsement to render the transfer possible. No transferor, of course, becomes a party to a bill in case of dishonour, unless his name does appear upon it. And, as will be pointed out, the transferor by delivery merely warrants to his immediate transferee, if such transferee takes for value, that the bill is what it purports to be, that he has a right to transfer it, and that at the time of the transfer he was not aware of any fact which rendered the bill valueless (sect. 58). A bill which is originally drawn payable to order (*infra*) can become payable to bearer, when the last or the only indorsement is in blank.

Bill to Order.

The more common way of drawing a bill is to make it payable to order, that is, which is expressed to be payable "To A B or order," or made payable to a particular person, as "To A B" "A bill payable to order is negotiated by the indorsement of the holder completed by delivery" (sect. 31, ss. 3). When, therefore, a bill is made payable to a particular person, or to a particular person or his order, that person must indorse the bill and deliver it. Delivery has been already dealt with. The indorsement consists in the writing of his name on the back of the bill by the payee. In the case of a bill of the kind indicated above, A B must indorse it. If the bill is payable to the order of two or more payees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others; and if the payee is wrongly designated or if his name is misspelt, he may indorse the bill as he is therein described, adding, if he thinks fit, his proper signature. There are, however, two ways in which the payee or transferor may indorse a bill, and that will affect the future negotiation of the instrument. If he simply writes his name on the back of the bill he is said to indorse it "in blank." If he indorses it in some such manner as the following, "Pay X Y or order," the bill is said to be "specially indorsed." The difference between these two kinds of indorsement is this. In the former case the transferee can negotiate the bill by mere delivery, as, in fact, it has become a bill payable to bearer, whereas in the latter case the signature of X Y is absolutely necessary before any further transfer can take

place. The holder of a bill which is indorsed in blank is in exactly the same position as the holder of a bill made payable to bearer. And the holder of a bill which is specially indorsed to him is in the same position after he has signed his name. The holder in either case can, however, alter the mode of transfer of the bill by converting a blank indorsement into a special indorsement. Thus, suppose A B is the holder of a bill drawn payable to bearer, and which has passed through several hands without any indorsement. He can indorse the bill "Pay M N or order," adding his own signature, and then it is specially indorsed, that is, M N must indorse the bill before it can be further negotiated. And the same is true of a bill drawn to order. Thus, in the example given above of a bill of this kind, X Y may make the bill payable to another particular person or his order. Then, again, this particular person must indorse the bill before negotiation is possible, and he, in turn, can then either indorse the bill specially or in blank. In the words of the Act, "when a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person" (sect. 34, ss. 4).

Perhaps these statements will be better understood by concrete examples. Take first of all a bill payable to bearer. "Three months after date pay to bearer the sum of one hundred pounds for value received." It is presumed that the bill is signed by the drawer, and that there is a drawee's name inserted, whether he has accepted or not at the time of transfer. John Jones becomes the holder of the bill. He wishes to transfer it to Joseph Smith. The transfer can take place without any indorsement on the part of Jones being necessary, although, for reasons already given, Smith may induce this transferor to put his name on the back. But whether the bill is indorsed or not by Jones, provided that if there is a signature it is simply "John Jones," the bill remains payable to bearer, and Smith now being the holder is in exactly the same position as Jones was in the first instance. Smith can transfer the bill without indorsement to, say, Alfred Thompson. If he does not indorse the bill, or according to the request of Thompson, indorses it "Joseph Smith" simply, the bill is still payable to bearer, as being indorsed in blank. And so the bill may go through any number of hands, the value of it

Example.

being continually increased by the addition of the names of different holders, each of whom becomes liable in case of necessity. But at any time a holder can change the character of the negotiability of the bill. Thus Smith could effect it in one of two ways. After he had procured the indorsement of Jones, he might have written above the signature "Pay Joseph Smith" or "Pay Joseph Smith or order." The bill would then have become specially indorsed, and its negotiation would have been impossible until Smith had himself added his own indorsement. Or, whilst allowing the bill to be a bill payable to bearer so long as it remained in his own hands, he might have specially indorsed it on transferring it to Thompson with this indorsement, "Pay Alfred Thompson" or "Pay Alfred Thompson or order," adding his own signature.

In the second case of a bill payable to order from its inception, the form is somewhat as follows: "Pay Charles Simpson," or "Pay Charles Simpson or order the sum of one hundred pounds." In order to negotiate the instrument Charles Simpson must indorse the bill. He can indorse it either in blank or specially. If he simply indorses his own name, the bill becomes a bill payable to bearer; if he names a person to whom or to whose order the bill is to be payable the bill is payable to order, and must be indorsed by the person named as indorsee before it can be transferred. And so as the bill passes through various hands it can be indorsed specially or in blank, and fluctuate between a bill payable to order and payable to bearer, a simple indorsement without naming any indorsee effecting the latter at any time, and a reconversion to the former being effected just in the same way as was described in the last paragraph.

Example.

The word indorsement has been used somewhat frequently, but it is necessary that its meaning should be accurately understood. In the first place it does not merely signify the writing of a person's name on the bill. As defined by the Act it includes delivery. In general, it consists of the payee or the holder writing his name on the bill. No additional words are necessary. The word itself refers to the back of the bill, but it has been held that a signature on the face of a bill may constitute a valid indorsement (*Young v. Glover*, 1857, 3 Jur. N. S., Q.B. 637). In the next place the indorsement must be of the entire bill. There is no such thing as a partial indorsement,

Requisites of Valid Indorsement.

as there is a partial acceptance. "A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill" (sect. 32, ss. 2). Reference has already been made as to how a bill should be indorsed when the payee's or the indorsee's name is misspelt, or the payee or the indorsee wrongly designated, and where there are several payees or indorsees. The same care must be taken in indorsing a bill as in drawing or in accepting the same where the indorser acts in a representative capacity and wishes to negative personal liability.

Transfer without Indorsement.

It is always essential that if a bill is payable to order the holder should have obtained the indorsement of the person to whom or to whose order it is payable or indorsed. Otherwise the holder cannot sue him upon the instrument. It is therefore provided by sect. 31, ss. 4, that "where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor." It should be noted that where an indorsement is subsequently obtained, the transfer takes effect as a negotiation from the time when the indorsement is given. It will thus be seen that a person who is the transferee of a bill to order which has not been indorsed at the time of the actual transfer may be seriously injured in his rights by becoming acquainted with any irregularities connected with the bill between the date of the transfer and the date of the indorsement.

Allonge.

Bills of exchange pass through so many hands in modern commercial transactions that the number of transfers may be very considerable, and the space on the back of the bill insufficient to contain all the names of the intended indorsers. A slip of paper is then attached to the bill to receive the further indorsements. This slip is called an "allonge," and becomes part of the bill. In some countries there are very minute provisions as to allonges in order to prevent frauds. Thus, it is sometimes required that the first indorsement on the allonge should begin on the bill and end on the allonge. Otherwise it is obvious that an allonge might be transferred from one bill to another.

Instead of an allonge some countries admit a copy of a bill of exchange and the copy is issued and negotiated as the bill itself. It is not necessary, however, to consider copies, and allonges are not commonly met with.

Sometimes a bill is indorsed conditionally, that is, the indorser adds something to his signature which would appear to affect the negotiability of the bill. It will be remembered that there can be no conditional order, and that a holder may decline a conditional acceptance. A conditional indorsement has really no effect at all. "Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not" (sect. 33). Thus, if a bill is indorsed "Pay A B or order upon my election as Master of the X Company, C D," and A B indorses the bill, the acceptor or any other payer can ignore the condition and pay the holder. This will be a valid payment although the condition has never been fulfilled. The Act of 1882 altered the law in respect of conditional acceptances. A payer formerly paid at his peril if the condition was not fulfilled, and it is obvious that he must have been placed in a difficult position, for he could not always inform himself as to whether the condition was or was not fulfilled. If the condition had been fulfilled he was liable in damages if he dishonoured the bill, and if the condition had not been fulfilled the payment was of no avail. But it is presumed that as between the indorser and the indorsee the condition would be operative.

Conditional Indorsement.

The holder of a bill of exchange may at any time strike out the indorsement of any indorser. If this is done intentionally such indorser is discharged from his liability on the bill, as well as any other indorser subsequent to him. If the indorsement is struck out by mistake the liability still remains.

Striking out Indorsements.

No negotiation of a bill can take place if it contains words prohibiting its transfer, or indicates an intention that it should not be transferable, although it is valid as between the parties thereto. The restriction may be imposed after the bill has got into circulation by any indorser who indorses it restrictively. "An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses

Restrictive Indorsement.

that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed 'Pay D only,' or 'Pay D for the account of X,' or 'Pay D or order for collection'" (sect. 35 ss. 1). When such an indorsement has been placed upon a bill the indorsee has the right to receive payment of the same, and also to sue any party thereto that his indorser might have sued, but he has no power to transfer his rights to any other person, unless he is expressly authorised to do so. The bill has, in fact, come to the end of its negotiability, and the last indorsee is the person who is to sue upon it. But "where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement" (sect. 35, ss. 3). In other words, where a bill is restrictively indorsed, the position of indorser and indorsee is that of principal and agent. The payment by the acceptor to the indorser is a discharge of the bill, and the indorsee cannot sue him, even though he gave value for the bill.

Order of Indorsements.

In order to fix the liability of parties to a bill, it is important to consider the order in which their signatures have been placed upon it. The acceptor, as has been stated, is primarily liable, and after him any other person who is a party to it. A holder has his choice of remedies in case of dishonour, as will be pointed out hereafter, but for the sake of the notices which must be given it must be clear what is the order of the various indorsements. It is therefore provided that where there are two or more indorsements on a bill, each indorsement is presumed to have been made upon it in the order in which it appears on the bill, until the contrary is proved. Each indorser should, therefore, sign his name on the bill below that of every other person whose signature appears thereon.

Liability by Indorsement.

Just as there are certain engagements presumed in the cases of a drawer and an acceptor, so there are similar engagements on the part of an indorser. The reason of them will be obvious when it is considered what is the usual course to be followed in dealing with bills of exchange. "The indorser of a bill by indorsing it (*a*) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a

subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken; (*b*) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements; (*c*) is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto" (sect. 55, ss. 2). Again it is provided by sect. 56 that "where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course." But in order to incur this liability, the bill must be regular in every respect and properly negotiated. Thus, A draws a bill on B, payable to his own order. B accepts the bill and gets C, his father, to write his name on the back of the bill to guarantee it. At the time when C wrote his name, the bill had not been indorsed by the drawer. The drawer cannot sue C the indorser, neither on the bill nor upon a guarantee, since there is no agreement to satisfy sect. 4 of the Statute of Frauds (*Jenkins v. Coomber*, 1898, 2 Q.B. 168; *Shaw & Co., Ltd. v. Holland and Neal*, 1913, 2 K.B. 15). All liability, however, may be negatived by an indorser who adds words to his signature, which show that he is not to be held responsible under any circumstances, *e.g.*, an indorsement followed by the words "sans recours," or the equivalent of them in English.

Length of Time of Negotiation.

When a bill is negotiable in its origin it continues to be a negotiable instrument until it has been restrictively indorsed, as explained above, or until it has been discharged by payment or in some other manner. The fact that an action has been brought upon a dishonoured bill does not terminate its negotiability, but where a judgment has been obtained the bill is extinguished by merger of the contract on the bill in the judgment as between the defendant and the plaintiff or any subsequent party. The date at which a bill becomes payable is noticed in the next chapter. If a bill is not paid upon that date it is said to be overdue, and if it is a bill payable on demand, it is said to be overdue when it has been in circulation for an unreasonable length of time, the question of unreasonableness being one of fact depending upon the particular circumstances of the case. But there is nothing to prevent the transfer of an overdue bill. The

transferee, however, does not gain the advantages of negotiability, for any bill which is overdue and negotiated can only be negotiated subject to any defect of title affecting it at maturity, and afterwards no person to whom it is transferred can acquire or give a better title than that which the person from whom he took it had. In other words, after maturity the contract on the bill is assignable, though simply by indorsement, and the bill has ceased to be negotiable in the full sense of the term. This is on the ground that a person must not take a bill blindly, and expect to be treated as an absolutely innocent holder. If he becomes possessed of a bill which is obviously overdue, even though he gives value for it, there are two questions which he ought to ask: (1) Why has the bill not been discharged at maturity? (2) What is the nature of the title of the transferor? It is for the transferee to satisfy himself upon these points, and he then takes the bill at his own risk, and gets no better title than the transferor had. The law is the same in the case of a person who takes a bill, even though not overdue, which has been dishonoured, if the fact of the dishonour is known to the transferee, that is, he takes it subject to any defect of title attaching thereto at the time of dishonour. On the other hand, a holder in due course (see sect. 29) is not affected in any way. In connection with overdue bills it is to be observed that it is a *primâ facie* presumption that every negotiation was effected before the bill became overdue. It may be here stated that there is a presumption of law that a bill which is twenty years old has been paid.

Negotiation Back.

It will sometimes happen that a bill gets back into the hands of the drawer, the acceptor, or a prior indorser before it has matured by negotiation. Subject to the sections of the Act which refer to discharges (59-64), the drawer, acceptor, or indorser may re-issue and further negotiate the bill, but he cannot enforce payment of the bill against any intervening party to whom he was previously liable. For example, A draws a bill payable to his own order, and indorses it to B. B subsequently indorses it to C, C to D, D to E, and last of all E indorses it back to A. A can re-issue and negotiate the bill, but he cannot enforce payment against any of the parties B, C, D, or E, since each of these in turn could recover from him as drawer. There would be cross actions for the same amount. But if A, the payee of a bill

drawn to his order, indorses a bill to B "without recourse," and afterwards the bill is negotiated in the way stated above, eventually getting back into the hands of A, A as the last indorsee can sue any of the parties B, C, D, or E, for there is no prior liability on his part to any of them, since it was negatived by his earlier indorsement.

Indorsements by Persons without Capacity.

The person whose name appears on a bill, other than the drawer or the acceptor, incurs the liabilities of an indorser to a holder in due course. But there can be no legal liability without capacity to contract. The fact of an infant or a corporation of limited powers indorsing a bill does not affect its negotiability. If either of them is an indorsee, the bill must be indorsed by them before it can be further negotiated, but no liability attaches to either, the other parties alone remaining responsible.

Discount and Pledge.

A bill is ordinarily transferred and negotiated in settlement of a debt, and it is the intention of the parties that the whole of the sum represented is the consideration passing from the transferee. Often, however, a bill is transferred to a banker or a bill-broker long before it becomes due, and an amount is paid for it less than the amount represented by the bill, the difference varying with market rates and being the price given for the accommodation. Such a transaction is known as discounting, the person who takes the bill being the discounter. He is a holder for full value. A distinction is to be made between the discounting of a bill, and the pledge or deposit of the same as a security. The pledgee is a holder for value to the extent of his advance. "Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien" (sect. 27, ss. 3). If, then, a pledgee sues upon the bill at its maturity, he sues as trustee for the pledgor so far as the difference is concerned between the amount which he has advanced and the amount of the bill. This difference, upon recovery, must be paid over to the pledgor. If the title of the pledgor was complete, the pledgee can recover the whole of the amount of the bill; if the title was defective, he can recover the amount of his advance, provided that the bill was taken by him without notice of the defect. The question of pledge is one of fact to be established in each particular case.

CHAPTER VIII

TIME OF PAYMENT

It has been pointed out that no mention of the dating of a bill is made in the definition of a bill of exchange itself. But, as it is of importance to know the true date of payment, certain sections of the Act make due provision for this matter. If a bill is expressed to be payable at a fixed period after date and is issued undated, or if the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert the true date of issue or acceptance, and a *bonâ fide* mistake as to the true date will not invalidate the bill. And it is always a presumption that the date contained in the bill, as to drawing, accepting, or indorsing, is the true date of the same. It will be recollected that a bill is not invalid because it is ante-dated, post-dated, or dated on a Sunday.

Importance of Date.

A bill payable on demand speaks for itself. It becomes due directly it is presented. And the same is true when the bill is expressed to be payable at sight, or on presentation, or when no time for payment is fixed. The holder of such a bill presents it to the drawee, whether the latter has or has not become the acceptor, and payment is due at once. There are no days of grace allowed where a bill is payable on demand, at sight, on presentation, or when no time of payment is fixed. As to when such a bill is overdue, see Chapter VII.

Demand and Sight.

When a bill is expressed to be payable at a certain number of days after sight, or after demand, or after presentation, or after the happening of a certain specified event which is certain to take place, it is the duty of the holder to go to the acceptor with the bill, or to send it to him, and to get the date of the acceptance appended. If the acceptor does not insert the date the holder may do so himself. The time of payment is then calculated from the date of acceptance. Thus, a bill is drawn dated the 29th June, 1907, payable thirty days after sight. The holder, payee, or indorsee, presents it for acceptance on the 2nd September, 1907. If the drawee accepts it on that date the thirty days commence

After Sight.

to run from that time, and the bill is payable at the expiration of thirty-three days from the 2nd September, the three days being the days of grace allowed. If the drawee does not accept the bill upon its first presentation, but becomes the acceptor at a later period, the holder of the bill, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment.

"Where a bill is not payable on demand, the day on which it falls due is determined as follows: Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: provided that (*a*) when the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day; (*b*) when the last day of grace is a Bank Holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a Bank Holiday, the bill is due and payable on the succeeding business day" (sect. 14, ss. 1). The wording of this section has caused a difference to arise as to the calculation of the date of payment of a bill in England and Scotland in one particular case, viz., when the last day of grace falls on the 26th December, and that day happens to be a Sunday. Since Christmas Day is not a Bank Holiday in England the due date of payment in England is the 24th December, whereas in Scotland, Christmas Day being a Bank Holiday in that country, the due date of payment is the 27th December. A right of action on the bill, unless it has been previously dishonoured by non-acceptance, does not accrue until after the expiration of the whole of the third day of grace (*Kennedy v. Thomas*, 1894, 2 Q.B. 759).

Days of Grace.

Mistakes so frequently arise as to the calculation of the date of payment that it is frequently inserted on the bill, as soon as it can be ascertained. If the bill is payable a certain number of days after date, the date of payment is known at once. If it is expressed to be payable a certain number of days after demand, or sight, the date of acceptance governs the whole, and the time of payment is not ascertainable until acceptance.

Illustrations.

The proviso in the last paragraph must always be kept in mind and a calendar consulted, especially to see which days are Sundays. It must also be remembered that a month, which by the common law means a lunar month (*Bruner v. Moore*, 1904, 1 Ch. 305), always signifies a calendar month when reference is made to bills of exchange. A bill drawn payable thirty days after date and dated the 1st February is due on the 5th or 6th March according as the year is or is not a leap year. A similar bill drawn payable one month after date is due on the 4th March. If any of these dates in March happens to be a Sunday or a day appointed as a public fast or thanksgiving day the due date of payment is advanced to the preceding business day. A bill dated on the 1st January and payable thirty days after date, subject to the proviso stated, is due on the 3rd February. A bill dated the 28th November and payable three months after date is due on the 3rd March, although in leap year this date would be advanced to the 2nd. And a bill dated the 28th, 29th, 30th, or 31st January and payable a month after date is due on the 3rd March. But in leap year the first-named is due on the 2nd March, and each of the other three is due on the 3rd March. As to usances, see the chapter on Foreign Bills. In any case, however, if a bill is marked "without grace," or "without days of grace," or something similar, no days of grace are allowed.

It is unnecessary to give similar illustrations of bills payable at a fixed period after demand or after sight. The date of the demand or sight fixes the date from which the calculation is to be made. If, however, the bill is noted or protested (*infra*) for non-acceptance, or for non-delivery, the time begins to run from the date of the noting or protest.

After Noting.

The date of a bill, when once inserted, is a material part of the same, and any alteration of the date, without the assent of all the parties liable on the bill, renders it void except as against the party who has himself made, authorised, or assented to the alteration, and all subsequent indorsers. The whole question of alteration of bills of exchange and the full consequences of the same will be noticed hereafter.

Alteration of Date.

The importance of the date of a bill is also seen when the time for bringing an action is considered as affected by the Statute of Limitations, an Act passed in 1623 (21 Jac. I, c. 16). A contract

upon a bill of exchange is a simple contract, and an action must be commenced within six years of the time when the cause of action arose. It has been pointed out how the due date of payment of a bill is calculated. This having been ascertained a holder must take proceedings within six years from that date, or he is liable to be defeated. The commencement of proceedings dates from the issue of the writ in the High Court, or the entering of the plaint note in the county court, and not from the hearing of the action. If the six years expire on a Sunday, the proceedings must be commenced, in order to be in time, on the day preceding at the latest (*Gelmini v. Moriggia*, 1913, 2 K.B. 549). But in any case, whether the action is brought upon a bill in the High Court or in a county court, the defendant must set up a special plea of the statute before the hearing of the action, and within the time fixed, or he will not be allowed to advance it against the plaintiff's claim. This defence will be dealt with at a later stage. It should be noticed that the law affecting prescription is not the same in Scotland as in England and Ireland. In dealing with negotiable instruments to which Scottish law applies, so far as the time for taking action is concerned, the general law of Scotland must be consulted.

Statute of Limitations.

There is an extension of the six years' time allowed if the plaintiff or the defendant is under certain disabilities. The former positions of married women and infants have been altered. A married woman has ceased to be unable to contract, and it has been pointed out that an infant is never liable on a bill of exchange. But in the case of an insane person, since no action can be taken personally by or against him until the recovery of his sanity, the period of six years begins to run from the time of such recovery. Again, if the defendant is beyond the seas, or out of the jurisdiction when the cause of action arises, the period of limitation begins to run from the date of his return (*Musurus Bey v. Gadban*, 1894, 2 Q.B. 352). But if the cause of action arises and the defendant then goes out of the jurisdiction, the statute runs at once, and his departure makes no difference (*Homfray v. Scroope*, 1849, 13 Q.B. 509). In such a case, in the absence of any acknowledgment by which the debt can be kept alive, the only course open to the plaintiff is to issue a writ, and to renew it continually until it has been served upon the defendant.

Exemptions from the Statute.

A High Court writ is good for a year, and may afterwards be re-sealed every six months by leave of a judge or a district registrar. A County Court plaint is also good for a year, and may be renewed every year by leave of the registrar of the County Court. Moreover, an acknowledgment of the debt due, either by part payment, by payment of interest, or by a confession of the same, is sufficient to keep the debt alive, and to destroy the effect of the statute. Part payment and payment of interest are matters of fact to be proved in the usual way. But the confession of the existence of a debt must, since the passing of the Statute of Frauds Amendment Act, 1828 (9 Geo. IV, c. 14), commonly known as Lord Tenterden's Act, be in writing and signed by the debtor or his duly authorised agent. The acknowledgment must be distinct and unconditional in its terms, and one from which a promise to pay the whole debt claimed can be inferred. If there are several joint debtors, there must be an acknowledgment by each in order to keep the debt alive against the whole of them, unless the parties liable are members of a partnership firm or one or more of the parties is or are authorised to sign on behalf of the rest. A reference in a will to a debt owing upon a bill of exchange, provided it is sufficiently clear, is sufficient to take the debt out of the statute, and to render an executor liable to pay the same out of the assets which have come into his hands, even though the testator died more than six years after the bill became payable. But a general devise for payment of debts will not revive a debt upon a bill if it has already become barred by the statute having run its course of six years, though it will prevent the running out if it has not already done so.

CHAPTER IX

PRESENTMENT

THERE are two kinds of presentment—presentment for acceptance and presentment for payment. The object of the first is mainly to get an additional security for the payment of the bill, though, as it will be shown directly, there are other reasons which render the presentment necessary. Presentment for payment is absolutely essential unless it is specially exempted by the provisions of the Act. An omission on the part of the holder of a bill of his duties as to presentment, as also of those relating to protest or notice of dishonour, may discharge a party to the bill from his liability thereon, and in such a case the party is also discharged from any liability on the debt or the consideration for which the bill was given.

Importance of Presentment.

It is the common practice to obtain the acceptance of the drawee as soon as possible after the bill is drawn. But such acceptance is not absolutely necessary in order to constitute the bill a negotiable instrument. All the parties to the bill are liable upon it, if they have capacity to contract, even though there is never any acceptance. If, however, a bill is presented and the drawee refuses to accept, the bill is dishonoured by non-acceptance, and an immediate right of recourse against all the parties accrues at once. There are, however, two exceptions to this rule. Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument. And where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

Presentment for Acceptance.

Take, for example, a bill addressed to A B, and made payable three months after date. If it is signed by the drawer and indorsed by the payee, it can pass through any number of hands, as pointed out in a previous chapter, before it is shown to A B, and presented to him for acceptance. Whether he signs it or not each of the indorsers and the drawer is liable to

Illustration.

the holder when the bill becomes due if A B fails to pay it, and if at any time before the three months have elapsed the bill is presented to A B and he refuses to accept it, the bill may be treated as dishonoured, and the holder has his right of action at once. But if the bill is made payable at a certain number of days after sight, it must be presented to A B for acceptance, for until he has seen it the date of maturity cannot be fixed, though, if he refuses to accept, the right of action, as before, accrues at once owing to the fact of dishonour. When a bill is duly presented for acceptance and is not accepted within the customary time, it may be treated as dishonoured by non-acceptance.

A bill which requires presentation for acceptance at a particular place is often called a domiciled bill. It is provided by sect. 39, ss. 4, of the Act that "where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers."

Domiciled Bill.

When it is necessary that a bill should be presented for acceptance, that is, when the bill is payable after sight, the presentment must be made within a reasonable time, the reasonableness of the time being determined by the particular circumstances of the case. Thus, in an old case, a bill was drawn at Windsor upon a drawee in London, payable one month after sight. The holder kept it four days before presenting it, and it was then dishonoured. It was held that there had been no unreasonable delay (*Fry v. Hill*, 1817, 7 Taunt, 397). But at the present time such a delay might be considered excessive. If there has been unreasonable delay the drawer and indorsers are discharged. The rules for presentment are as follows: "(*a*) The presentment must be made by or on behalf of the holder to the drawee or some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue; (*b*) where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made

Time and Rules for Presentment.

to him only; (*c*) where the drawee is dead presentment may be made to his personal representative; (*d*) where the drawee is bankrupt, presentment may be made to him or to his trustee; (*e*) where authorised by agreement or usage, a presentment through the post office is sufficient." Bearing in mind what has already been said as to presentment for acceptance in general, it is excused and a bill may be treated as dishonoured by non-acceptance in the following cases: "(*a*) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill; (*b*) where, after the exercise of reasonable diligence, such presentment cannot be effected; (*c*) where, although the presentment has been irregular, acceptance has been refused on some other ground. The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment" (sect. 41). (As to "fictitious" person, see p. 47.) The presentment for acceptanee is, of course, personal, for it is the drawee himself, or his duly authorised agent, who must write the acceptance across the bill. There is no necessity for presentment for acceptance at any particular place, nor, subject to what has been stated as to a reasonable time, at any particular date. Reference has already been made to dishonour by non-acceptance and its consequences, the rules of which are set out in sect. 43 of the Act. It has been pointed out in Chapter V that a holder is not bound to take a qualified acceptance, and the consequences which follow such an acceptance. See also sect. 44 of the Act.

Presentment for Payment.

Except in the cases mentioned hereafter, presentment for payment is always necessary, and the holder of a bill who fails to present it duly for payment, and who is not excused for any delay in so doing, runs serious risks, as where a drawer or an indorser is discharged by reason of non-presentment from liability on the bill, such drawer or indorser is also discharged upon the consideration for which the bill was given. But where a bill has been accepted generally, no presentment is necessary in order to charge the acceptor—having accepted, he is liable to pay the bill upon maturity. The reason for this exception is that by the common law a debtor is bound to seek out his creditor and pay him. By accepting the bill the acceptor has admitted liability, and he is bound to pay when the bill becomes due. Whatever, therefore, may be the effect of non-presentment for payment

to the drawer and the indorsers, the acceptor always remains liable. But a holder who failed to present a bill to the acceptor, unless presentment was excused by the Act, and sued upon it, would probably be compelled to pay the costs of the action, and would be disentitled to any interest. In presenting a bill for payment the holder should exhibit the bill to the person from whom he demands payment, and when the bill is paid the holder must forthwith deliver it up to the person who pays it, whether the payment is made by the acceptor or by any other person who is a party to it.

The due date of payment being fixed in many cases by the terms of the bill itself, the presentment for payment must be made upon the day that it falls due. When, however, a bill is payable on demand, presentment for payment must be made within a reasonable time after the issue of the bill, and the reasonableness of the time will depend upon the circumstances of the case. " Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found " (sect. 45, ss. 3). A collecting agent or a banker is often appointed to present a bill for payment, and he must take all the necessary steps to see that the requirements of the Act are complied with. Otherwise he will be liable for any loss which may fall upon his principal. Delay which is beyond the control of the holder is excused if it is not imputable to his default, misconduct, or negligence. Just as the rules for presentment for acceptance and excuses for non-presentment are set out most fully and clearly in the Act, so there are rules as to presentment for payment and excuses for non-presentment, contained in sect. 45, ss. 4-8. " (4) A bill is presented at the proper place, (*a*) where a place of payment is specified in the bill and the bill is there presented ; (*b*) where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented ; (*c*) where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his ordinary residence, if known ; (*d*) in any other case

Time and Rules for Presentment.

if presented to the drawee or acceptor wherever he can be found, or if presented at his last-known place of business or residence. (5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required. (6) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all. (7) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found. (8) Where authorised by agreement or usage a presentment through the post office is sufficient." The following are the cases in which presentment for payment is dispensed with: "(*a*) Where, after the exercise of reasonable diligence, presentment, as required by the Act, cannot be effected; (*b*) where the drawee is a fictitious person; (*c*) as regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented; (*d*) as regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented; (*e*) by waiver of presentment, express or implied" (sect. 46, ss. 2). As to waiver of presentment, see *Mactavish's Judicial Factor v. Michael's Trustees*, 1912, S. C. 425. With regard to (*a*), the fact that the holder of a bill has reason to believe that the bill will, on presentment, be dishonoured does not dispense with the necessity for presentment.

Presentment to Charge Other Persons.

Presentment is necessary, as has been pointed out, to charge the parties to the bill. But with regard to other persons, presentment for payment seems to be advisable, if not absolutely necessary, in order to render them liable, if they are in any way connected with the negotiation or transfer of the bill. Thus, a guarantor for the payment by the drawer or any indorser, the guarantee being given by a separate document in writing, will be released from his liability unless presentment for payment is made. But if the guarantee is given for the payment by the acceptor, presentment for payment is not necessary, since it is not necessary in order to charge the

acceptor himself. Again, a transferor of a bill by delivery, that is, without indorsement, is never liable on the bill, nor is he liable upon the consideration for the same unless (1) it has been given in respect of an antecedent debt, or (2) the transfer is not intended to operate as a discharge of his liability. But, in order to charge such a transferor, presentment for payment must be made, though it is, perhaps, not so necessary for the holder to use the same diligence in respect of him as it is in respect of the parties to the bill.

CHAPTER X

DISHONOUR

In reference to bills of exchange there is said to be a dishonour when there is a refusal on the part of the drawee to accept the same, or when, after acceptance, the acceptor refuses to pay on the due date of payment. In the case of dishonour by non-acceptance the holder has an immediate right of recourse against the drawer and any of the indorsers, and when there is dishonour by non-payment there is the same right against the acceptor as well as against the other parties. A bill is further dishonoured by non-payment when presentment is excused, and the bill is overdue and unpaid.

What is.

But in order that the holder of a bill may resort to his remedy, he must first of all give notice of dishonour, that is, a formal notice that the bill has been refused acceptance or payment, as the case may be. There are, as will be shown, various cases in which notice of dishonour is excused. No reliance, however, must be placed upon the fact that the drawer or any indorser is fully aware of the dishonour. Notice must be given to each of them in any case if they are to be held liable. The drawer or any indorser to whom notice is not given is discharged from all liability, both on the bill and on the consideration. The reason for this strictness is very apparent. A party to a bill is aware that he may be called upon to meet the same at a certain time. He ostensibly puts aside funds to liquidate his liability. It would be a great hardship if he was compelled to lock up his money for an indefinite period. The law allows him to assume, therefore, that if the due date of payment passes by, and he has received no information that the bill has been dishonoured, the bill has been met in the ordinary course, and his liability is at an end. It is, however, provided by sect. 48, that "(1) where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course, subsequent to the omission, shall not be prejudiced by the omission; (2) where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a

Notice of Dishonour.

subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted." These two statements may be illustrated as follows. A bill is drawn and indorsed by several parties. The last transferee presents it for acceptance to the drawee. Acceptance is refused. The holder should at once give notice of dishonour, and as far as he is concerned the failure to do so is fatal to his rights. But if instead of giving the notice he transfers the bill to a holder in due course (sect. 29), such holder is not prejudiced by the failure of his transferor to give the notice, but he may do so himself if upon his presenting the bill to the drawee it is again refused acceptance, and the parties to it are liable. In the second case a similar bill is presented for acceptance by the holder and acceptance is refused. Notice of dishonour is given to charge the parties. Before any action is brought the drawee accepts when the bill is again presented to him. Notice of dishonour by non-payment must be given if payment is refused in due course, although there had been the previous notice of dishonour for non-acceptance.

The following fifteen rules are laid down by sect. 49 of the Act, in accordance with which notice of dishonour must be given :—

Rules as to Notice.

"(1) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill :

"(2) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice, whether that party be his principal or not :

"(3) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given :

"(4) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given :

"(5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment :

"(6) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour:

"(7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A mis-description of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby:

"(8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf:

"(9) Where the drawer or the indorser is dead, and the party giving notice knows it, the notice must be given to the personal representative, if such there be, and with the exercise of reasonable diligence he can be found:

"(10) Where the drawer or the indorser is bankrupt, notice may be given either to the party himself or to the trustee:

"(11) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others:

"(12) The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter. In the absence of special circumstances, notice is not deemed to have been given within a reasonable time unless—

"(*a*) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill;

"(*b*) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter:

"(13) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he

give notice to his principal he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder:

"(14) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour:

"(15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office."

A few observations are necessary in order to render some of the points quite clear. It is a matter of importance to make as many persons as possible liable when a bill is dishonoured. The holder must be alert and select the persons to whom he wishes to give notice of dishonour. If he gives the notice to his transferor, the transferor is liable to him, though the transferor can in turn give notice to any previous party. But if the holder applies direct to the drawer, the notice of dishonour is good as though given by any of the prior indorsers. So also if an indorser gives notice, his notice not only serves as a notice by the holder, but is also for the benefit of all indorsers prior to himself and subsequent to the party to whom the notice is given. No special form of notice of dishonour is given in the Act, and so long as sufficient particulars are set out in the notice it is improbable that any exception would be taken to the same on the ground of irregularity, provided it was not likely to mislead the recipient. The following example will suffice:—

Remarks.

115 *North Street, Sheffield,*
Sept. 25th, 1918.

Take notice that a bill of exchange for £200 *drawn by you* (or *indorsed by you*) *upon A B, dated* ——— *and payable at* ——— (adding, if addressed to indorser, *and which bears your indorsement*) *has been dishonoured by non-acceptance* (or *non-payment*), *and that you are held responsible therefor.*

C D.

In the case of a foreign bill the words "and protested" must be added, if the bill has been noted and protested. The great point

to be aimed at is the identification of the bill together with any words which make it clear that acceptance or payment has not been obtained. The return of a dishonoured bill is notice of dishonour, but it would be unwise at any time to hand over the best evidence of liability to a person who is to be charged upon the document. As in most cases connected with bills of exchange, whatever is to be done by any party may be effected by his duly authorised agent.

The rules as to time for giving notice are of the utmost importance, and it is very difficult to get over any delay or mistake in this respect.

Time for Giving Notice.

By sect. 50, ss. 1 of the Act " delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the notice must be given with reasonable diligence." This is owing to the fact that any person who receives notice of dishonour has the same time allowed as any other prior person giving notice in which he himself may notify any other party to the bill in order to render him liable. It is obvious that when there are many indorsers the time consumed would be very considerable unless stringent restrictions were placed upon the giving of notice. And so, if a holder delays to give notice of dishonour within the proper time, he discharges a previous indorser, and the original notice being invalid no subsequent notice can be good. In connection with this matter the case of *Fielding v. Corry*, 1898, 1 Q.B. 268, is worthy of consideration. A branch of a county banking company received from a customer a bill of exchange and forwarded it to a London bank for presentation. The bill was dishonoured, and the London bank on the following day sent notice of dishonour by post to a branch of the county banking company, but not to the branch from which they had received the bill. On the next day they discovered the mistake and telegraphed notice of dishonour to the bank from which they had received the bill. The notice given by that branch, and all subsequent notices, including that to the defendant, who was an indorser of the bill, were sent in due time. In an action by the holder of the bill it was held by a majority of the Court of Appeal that the sending of the telegram was a sufficient compliance with the requirements of the Act, but the judgment of Lord Collins (then Collins, L.J.), who dissented, is worthy of notice, and he was of opinion that the

branches of a bank ought to be regarded as distinct, that the written notice of the London bank, not having been sent to the particular branch, was ineffective, and could not be rendered effective by the telegram which was out of time.

It has been explained what is meant by remote parties, and an illustration may serve to show how remote parties must be dealt with in order to render them liable on a bill. Suppose a bill is drawn and afterwards negotiated, and the names of several indorsers appear on the document. The bill is dishonoured when presented by the holder, either by non-acceptance or by non-payment. The holder must give notice of dishonour to any person or persons whom he wishes to charge. If he knows the address of the drawer and of some, but not all, of the indorsers, he should send notice to each of those that he knows. Then each indorser has the same time after receiving notice which the holder had after dishonour in which to give notice to any indorser he wishes to charge. If the notice is given in due time each party is liable, and the holder, upon proving that notice has been duly given, can sue any of the parties. But if there is any delay on the part of any of the parties in giving notice, the party who does not receive notice is exonerated from his liability, and so are all previous indorsers, since they in turn cannot receive the notice in due time. The holder, therefore, cannot sue any party except those to whom the proper notice has been given.

Remote Parties.

As the post is generally made use of for the purpose of serving notices, it is essential that there should always be complete evidence forthcoming, if necessary, that the notice was duly posted. A copy of the notice should be preserved, and the person who actually posted the letter should be called as a witness. It must also be proved that the letter was not returned through the Dead Letter Office.

Posting Notice.

The importance of giving notice of dishonour cannot be overestimated, and it is advisable that where a bill is dishonoured that notice should be given in every case, although it is provided by the Act that in some instances it may be dispensed with. These instances are as follows:—

Notice of Dishonour Dispensed with.

"(*a*) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged:

"(*b*) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice:

"(*c*) As regards the drawer in the following cases, viz.:—

"(1) Where the drawer and the drawee are the same person;

"(2) Where the drawee is a fictitious person or a person not having capacity to contract;

"(3) Where the drawer is the person to whom the bill is presented for payment;

"(4) Where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill;

"(5) Where the drawer has countermanded payment.

"(*d*) As regards the indorser in the following cases, viz.:—

"(1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill;

"(2) Where the indorser is the person to whom the bill is presented for payment;

"(3) Where the bill was accepted or made for his accommodation."

It has been already pointed out that the acceptor of a bill is not entitled to any notice of dishonour when the bill is dishonoured by non-payment, and the same rule applies to a person who has guaranteed payment by the acceptor. As to waiver of notice, when this is given in favour of a holder by the drawer, it applies also to all parties prior to the holder as well as to any subsequent holders. But if the waiver is given by an indorser, this only affects the indorser and the parties subsequent to him, as far as the indorser is concerned. Notice of dishonour must be given in due course to all prior indorsers. The party who waives notice of dishonour must be fully acquainted with all the circumstances of the case in order to make the waiver of any value.

In addition to giving notice of dishonour the holder of a dishonoured inland bill may, if he thinks fit, cause the bill to be noted and protested. But the only object of noting and protesting is to get some person, whether already a party to the bill or a

stranger, to accept it for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

Noting and Protesting.

It is not necessary to note or protest any inland bill in order to preserve the recourse against the drawer or an indorser. But in the case of a foreign bill, which appears on the face of it to be such, when there has been a dishonour either for non-acceptance or for non-payment, as the case may be, the bill must be duly protested for non-acceptance or non-payment. If it is not protested, the drawer and the indorsers are discharged. Protest is dispensed with if the bill does not appear to be a foreign bill upon its face.

The act of noting a bill consists in the recording upon the face of it, by a notary public, the fact of a refusal of acceptance or payment as a ground of protest. When a bill of exchange has been presented for acceptance or payment, and returned unaccepted or unpaid, the holder applies to a notary public, who presents the bill a second time ; and if it is not then accepted or paid, he notes the facts of the case upon the bill and upon a slip of paper, which he attaches to the bill. By sect. 51, ss. 4, of the Act of 1882, when a bill is noted or protested, it must be noted on the day of its dishonour. The words " it must be noted on the day of its dishonour " were repealed by the Bills of Exchange (Time of Noting) Act, 1917, and the following words were substituted therefor : " It may be noted on the day of its dishonour, and must be noted not later than the next succeeding business day."

Noting a Bill.

The protest is the formal notarial certificate attesting the dishonour of the bill, based upon the noting, though if a notary public is not available other means may be adopted of obtaining the certificate. As time is always of importance so as to fix liability, the bill ought to be protested on the day of dishonour. If, however, the bill has been noted in due course it may be protested afterwards as of the day of noting. A bill may be protested by the holder where the acceptor becomes bankrupt or insolvent or suspends payment before it matures, and this is done for better security against the drawer and indorsers. This does not signify, in the case of an inland bill, that the drawer or the indorsers are bound to find another person to accept for the honour of any of them ; but when the bankruptcy, etc., of the

Protest.

acceptor has arisen and someone else is prepared to accept, he may do so as if the bill had been protested for dishonour by non-acceptance.

A bill must be protested at the place where it is dishonoured; but when a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day. And again when a bill drawn payable at the place of business or residence of the drawee has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

Place of Protest.

A protest must contain a copy of the bill, and must be signed by the notary who makes it, and it must also specify, (*a*) the names of the parties for whom and against whom the bill is protested; (*b*) the place and the date of the protest; (*c*) a statement that acceptance or payment has been demanded by the notary, the answer given (if any), or a notification of the fact that no answer was given, or that the drawee (in case of non-acceptance) or the acceptor (in case of non-payment) could not be found; (*d*) a reservation of rights against all the parties liable; (*e*) the subscription and seal of the notary.

Requisites of Protest.

Although it is usual for the protest to be made by a notary public, it may be made by any respectable householder in the presence of two witnesses. The following form is given in the first schedule of the Act of 1882, for use when the services of a notary cannot be obtained :—

When no Notary Available.

"*Know all men that I A B* (householder) *of in the county of in the United Kingdom, at the request of C D, there being no notary public available, did on the day of at demand payment* (or *acceptance*) *of the bill of exchange hereunder written, from E F, to which demand he made answer* (state answer, if any) *wherefore I now, in the presence of G H and J K do protest the said bill of exchange.*

"(*Signed*) *A B*

G H } *Witnesses.*"

J K }

Lost Bill. Where a bill has been lost or destroyed, or is wrongfully detained from the person who is entitled to hold the same, protest may be made on a copy or written particulars thereof.

Protest Dispensed with. Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, when it is not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Stamping. The protest must be stamped. Where the duty on a bill does not exceed one shilling, the stamp required is of the same amount as that of the bill. In any other case the stamp upon the protest is a shilling one.

CHAPTER XI

RIGHTS AND LIABILITIES

In considering the rights and liabilities of the parties upon a bill of exchange, it is to be presumed for the present that the bill is quite regular in form, the effects of alteration and forgery, as well as of unauthorised signatures, being deferred to the next chapter. The holder of a bill is the payee or indorsee of a bill who is in possession of it, or the bearer of the same. The holder for value and the holder in due course have been frequently referred to, and for greater certainty the reader should consider the definition of each given in sect. 27, ss. 2, and sect. 29, ss. 1, respectively. The rights and powers of the holder are thus stated in sect. 38: "(1) He may sue on the bill in his own name; (2) where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill; (3) where his title is defective, (*a*) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (*b*) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill."

Rights of Holders.

The holder of a bill may sue all the parties to the bill at the same time, or one after another, and it is immaterial that he has no interest in the bill personally. And the holder is the proper person to sue even though he is only the holder as agent for another person. A judgment obtained against any one of the parties will not act as a satisfaction of the bill so far as the rest are concerned, unless there are two or more parties jointly liable. In that case a judgment against one will release the others. If the holder is a holder in due course there is no defence to any action which he may bring, no matter what defences are open to other parties between themselves. Where the holder is not a holder in due course, he may be met by the defences which have been previously indicated. For example, if he has received the bill without consideration he cannot sue the person

Right of Action.

from whom he received it, though he can sue all prior parties unless his immediate transferee also received it without consideration. In such a case he must resort to the last person who parted with the bill for value, and he has also a right against all parties prior to that one. Again, a holder who is not a holder in due course is always liable to be met with any of the defences which would have been open to his predecessors in title. A holder can always negotiate a bill to a holder in due course, and then the latter can sue, if it is clear that the bill was complete and regular on the face of it, that it was not overdue and no notice of dishonour had been given, that he took it in good faith and for value, and that he knew of no defect in the title of the person negotiating it. If a bill is made payable to a specially named person or persons the action must be brought in the name of such person or persons. In the case of a bill which is payable to bearer, any person may sue upon the bill who is actually or constructively in possession of it. It should here be noticed that if the holder brings an action upon a bill and afterwards takes a composition from the acceptor, all the other parties to the bill are discharged. The payment of a part of a bill has not the same effect.

Lost Bill.

At common law, it seems that no action could be maintained upon a negotiable bill that had been lost, and similarly no action was maintainable upon a destroyed bill unless its destruction could be proved. Now, however, by sects. 69 and 70 of the Act it is provided : " Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again. If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an ndemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question." From the wording of these sections it will be clear that a holder who has lost a bill is still in a very unsatisfactory condition. He may compel the drawer to give him a new bill, upon an undertaking of indemnity, but no provision is made as to obtaining a fresh

acceptance or fresh indorsements. If action is taken on a lost bill the holder should first of all tender an indemnity. "If no tender of an indemnity were made before the suit, the plaintiff would certainly not obtain relief on such terms as to give him the costs of the suit" (*King v. Zimmerman*, 1871, L.R., 6 C.P. 466). The loss or destruction of a bill does not dispense with the proper notice of dishonour being given. It has been pointed out in the last chapter that a protest may be made upon a copy of a lost or destroyed bill.

Right in Bankruptcy.

When a party to a bill has become bankrupt, the holder, who could have maintained an action against such party if he had remained solvent, can prove against his estate in bankruptcy. But if the other parties to the bill are substantial persons, a holder will not deem it worth while to trouble the bankrupt; he will pursue his remedies against some other party from whom he will probably receive payment in full, leaving to such other party any rights which he may possess against any prior indorser, the acceptor, or the drawer. If it is the acceptor who becomes bankrupt, the drawer will, in all probability, be the person into whose hands the bill will eventually fall, and the drawer has no remedy at all except against the acceptor's estate, against which he must prove. Any defence which could have been set up in an action on the bill is available against a proof. In the ordinary course no action is maintainable upon a bill until it falls due. But where a bill has been given by a person who commits an act of bankruptcy before the due date of payment, or where any person liable upon a bill does the same thing prior to the maturity of the bill, a holder can present a petition upon his debt (*Ex parte Raatz*, 1897, 2 Q.B. 80). The reason for this is that where a bill is given in payment of a debt it acts as an extension of credit, that by the act of bankruptcy the period of credit is determined, and that the debt becomes payable immediately.

Transmission of Right.

Any rights which the holder of a bill had are transmitted by law upon his death to his executor or administrator. Either of them can sue upon the bill, or negotiate it as the holder might have done. An executor or administrator should, however, take care in the case of indorsement to make it clear, in accordance with what was pointed out in the chapter dealing with the capacity of parties, that he indorses in his character of executor or administrator, otherwise he may

render himself personally liable upon the bill. Again, a bill may be seized in execution, and the sheriff can give a good discharge for the same upon payment to him. The sheriff may also maintain an action upon the bill in his own name, but he should take care to procure an indemnity beforehand for costs from the judgment creditor who has issued execution. Subject to the special rules to be observed in bankruptcy, the trustee of a bankrupt has all the rights of a holder, and can sue upon a bill of which the bankrupt was holder at the commencement of the bankruptcy. A person who is at the point of death may make a valid conditional gift of a bill of exchange of which he is the holder, which is called a *donatio mortis causâ*, and the donee becomes entitled to the rights of the holder if the latter dies and there has been no revocation of the gift.

Cessation of Rights.

As soon as the holder of a bill is paid by any indorser, his rights are at an end, and he must deliver up the bill to the person who pays the amount of it. The payer then becomes the holder, and he is entitled to all the rights which were possessed by the original holder from whom he has taken the bill. In point of fact each indorser may become a holder of the bill in turn, and he has the right to sue any of the prior indorsers, the drawer, and (unless the bill has not been accepted) the acceptor. It is not to be supposed that refusal of payment exonerates an acceptor. If the holder is perfectly satisfied that he has a complete case, that is, if he is a holder in due course, he will probably sue the acceptor in preference to any of the indorsers, as he may have taken the bill relying implicitly upon the solvency and ability of the acceptor, and only treated the indorsers as a kind of secondary security.

Illustration.

A bill is drawn by A upon B, and accepted by B. It is payable to C, and C indorses it to D. It passes through various hands, being indorsed successively by E, F, G, and H. X is the person in possession of the bill. He is the holder, either in due course or not. If he is a holder in due course, and the bill is not met at maturity, X can sue any party to the bill, and there is no defence to his action, unless it is shown that some one or more of the signatures have been forged. If the bill has been specially indorsed to X, X must sign, and he is the person who must sue, though in case of his death or bankruptcy, his successors or the trustee occupy his position and may pursue his rights. If X is a

holder for value he may sue any of the parties to the bill, but any defence which would be open against his transferor is equally available against him. If X is simply a holder, and has given no value for the bill, he cannot sue any of the parties subsequent to the transference when value was given for it. In any case, in accordance with the rules stated in the last chapter, the right of action is entirely dependent upon due notices of dishonour being given. Directly any indorser comes forward and pays the amount of the bill, the holder X must transfer the document to him. X now drops out, and the indorser who has taken the bill occupies his place in every respect. He is the holder, and he is entitled to all the rights and remedies of a holder against all parties prior to himself. Thus, X will probably be paid by H, and then H is the holder with all the rights that X had. Afterwards H is paid by G, G by F, F by E, E by D, D by C in succession. C, the payee, is paid by A the drawer, and last of all A is left as a holder to seek his remedy against B, the person primarily liable, and who has caused all the difficulty by failing to meet the bill at maturity. The illustration given has had reference to dishonour for non-payment at maturity. The same procedure would have been adopted in case the drawee had refused to accept when the bill was presented to him for acceptance. Without waiting any time, and upon giving the notices of dishonour for non-acceptance, the holder could pursue the course stated above, and each of the indorsers would successively have the same rights as the holder possessed. It is only in the last instance that there would arise a difference. Since the drawee has not signed the bill he cannot be sued upon it, and the drawer is left without a remedy upon the instrument. If, however, there was a consideration for the bill, the drawer has an independent right of action against the drawee. But that right is, of course, distinct from his right upon the bill.

The holder of a bill in due course is under no liability to any person. He is the person solely entitled to the amount of the bill.

Liabilities.

But where he is an agent or trustee, although he is the person to sue and receive the proceeds, he only does so in his character as trustee or agent, and he must hand over the proceeds to his beneficiary or his principal. As to the liabilities of the other parties to the bill, these have been dealt with in separate chapters, and reference has been made to the various estoppels binding each of the parties. These are set out in sects.

54-56 of the Act of 1882. The rules as to the liability of a transferor by delivery without indorsement, and the warranty given by such a transferor are contained in sect. 58. Put shortly, they are to the effect that he is not liable upon the instrument, and that he warrants the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he did not know it was in any way defective. It will not have been forgotten that any party to a bill, except the acceptor, may sign the bill "sans recours," and so negative his own personal liability. Any indorser or the drawer who thus signs is absolutely free.

Measure of Damages.

It becomes necessary where a bill has been dishonoured to discover the measure of the damages, so that the holder may know the amount for which he ought to sue. The damages, as measured by sect. 57 of the Act, are liquidated damages, and this makes it possible for the plaintiff in an action on the bill to indorse his writ specially under Order III, rule 6, and proceed under Order XIV, as explained hereafter. It is provided by the section mentioned as follows: "(1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser (*a*) the amount of the bill; (*b*) interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case; (*c*) the expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest. (2) In the case of a bill which has been dishonoured abroad, in lieu of the above damages the holder may recover from the drawer, or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment. (3) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper." As to what expenses in connection with noting and protesting will be allowed, reference should be made to the case of *In re English Bank of River Plate*, 1893, 2 Ch. 438.

The section referred to in the last paragraph shows when interest can be claimed in an action on a bill, and the date from which such interest is to be calculated. That is, interest for which a claim may be made on a specially indorsed writ. But a claim for interest may also be added in a specially indorsed writ if there is a contract expressed on the face of the bill to pay interest. Thus, if a bill is drawn at six months for £200 payable with interest at 5 per cent., such interest is a liquidated amount which can be added to the amount of the bill, and claimed at once. Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue of the bill (sect. 9, ss. 3). In other cases interest is not allowed as a matter of course, though as a bill is a written contract, it is always possible for the court to allow interest on debts created by a bill. But since the allowance of interest is quite discretionary, a claim for it cannot be indorsed specially on the writ of the plaintiff, though it may be claimed where the action is not to be summarily disposed of under Order XIV, but is ordered to go to trial in the ordinary course. In any case, a claim for interest is made from the date of the service of the writ till judgment. As against an indorser, interest is calculated from the date of the delivery of the notice of dishonour. The rate of interest allowed is 5 per cent. as an ordinary rule, though a much higher rate is allowable by contract between the parties. The only limit is the discretion of the court which will interfere and set aside agreements where the rate of interest is excessive and unconscionable as provided by the Money Lenders Act, 1900. A guarantor of a bill is liable to pay interest if a claim for it could be made against the person for whom he has given a guarantee.

Interest.

It is very obvious that in many respects the law of suretyship is peculiarly applicable to bills of exchange. The liability of the surety, however, is contained in the bill itself where he happens to be a party to it. As to guarantees made independently of the bill, the general law of principal and surety is that which applies, and reference must be made to this branch of the subject in other manuals. It should be stated generally, however, that where a surety discharges a debt due upon a guarantee, the surety has a right to be placed in the same position

Principal and Surety.

towards the principal debtor as the creditor is. All securities and other rights, of whatever kind, must be transferred to him. There is one point, however, to be noticed in connection with accommodation bills which may vary the order of liability, and which is really dependent upon the law of guarantee. It is this. Where a person draws, or indorses, or accepts a bill for the accommodation of another, it is the person accommodated who is liable ultimately to the person accommodating in case the latter is compelled to pay. His engagement is, in fact, to provide funds for the payment of the bill at maturity, and if he fails to do so to indemnify the accommodating party who has to meet the bill.

CHAPTER XII

FORGERY AND ALTERATION

THE section which deals first of all with forged or unauthorised signatures is the 24th. It is as follows: "Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority. Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery." In connection with this section the provisions of sect. 54, ss. 2, and sect. 55, ss. 2, must first of all be noticed, as showing what are the estoppels binding the acceptor and the indorser of a bill. These have been dealt with already in previous chapters. The provisions of sects. 60, 80, and 82, relating to the protection of bankers who pay bills payable to order on demand, and collect crossed cheques, will be referred to in detail later. These sections are those to which the qualifying words "subject to the provisions of this Act" are applicable.

Forged or Unauthorised Signature.

It is not necessary to enter into a long discussion as to what constitutes forgery, but it may be generally defined as the fraudulent making or alteration of any document with the intention of prejudicing another person. The forgery of certain documents has been constituted a felony by various statutes, and in these documents are included bills, cheques, and notes. (See the Forgery Act, 1913.) It is the intent to defraud which constitutes the actual offence, and if the intent is negatived there is no forgery. There are many ways in which forgery may be committed, but the discussion of these belongs to criminal law; and in the present chapter it is intended to deal with the fraudulent placing of a signature on a bill, whether as drawer, acceptor,

Forgery.

or indorser, and the civil liabilities which arise thereunder. As it has been pointed out on several occasions, the names of persons signing a bill are obtained in order to make them liable upon the instrument. Directly the name of any person is found there, he is *primâ facie* responsible for the payment of the bill. It is of the utmost importance, therefore, that the greatest possible protection should be afforded when a name has been forged, or when the signature has been affixed without any authority. "A forged signature is wholly inoperative." And it cannot be ratified.

Through or Under.

The holder of a bill, even though he is a holder in due course, has no right to retain a bill which bears a forged signature, he cannot give a discharge for it, and he cannot sue upon it. But in order that this rule may operate, the holder must have taken the bill "through or under" the signature, that is, the signature must have been a necessary part of the instrument so as to pass it from its last possessor to the holder. If it is the signature of the acceptor that is forged, the bill is valueless in the hands of any person who holds it. The same does not follow if the signature of the drawer is forged, because it is to be borne in mind that the acceptor is estopped from denying the genuineness of the drawer's signature, by reason of sect. 54 of the Act. So it follows that when the drawee has become the acceptor, the drawer's signature is warranted to be genuine, and the title of any holder is derived "through or under" the signature of the acceptor. Having thus dealt with the signature of the acceptor, it is now essential to consider the position when the signature of an indorser has been forged. This depends entirely upon whether the bill is specially indorsed or indorsed in blank. So long as the bill remains specially indorsed, the signature of the person to whom or to whose order the bill is negotiated must be a genuine one, for a title to the bill can only be made through the indorsement. But if the bill is indorsed in blank, and it has been shown how a bill may become changed from a specially indorsed one to one indorsed in blank, the signature of the transferor is not necessary to pass the title to the transferee. In practice, the transferee will generally get the transferor to add his signature; but since the title is not acquired through or under the signature, the bill is valid and the holder can sue all the other parties to it. An illustration will render this clearer. A bill is indorsed "Pay

William Smith or order." The real William Smith—not some other William Smith who was not intended to be the indorsee—must indorse the bill; and if his signature is forged, the bill is worthless. The holder cannot retain it, nor recover upon it, nor give a discharge for it. If he has taken the bill for value, he has lost his money. But if William Smith indorses the bill in blank, and the bill gets into the hands of any other person, a transfer can be made by simple delivery, and it is immaterial, as far as the holder is concerned, that he obtained it in good faith from the person in whose possession it was, and that such person indorsed the bill in any name whatever. The holder does not derive his title through the forged indorsement, but through the indorsement of William Smith, and he can sue any of the parties to the bill without taking the slightest notice of the forgery.

Holder's Responsibility.

The liability to loss through forgery should render the person who takes a bill of exchange extremely cautious as to the identity of his transferor, and the genuineness of his signature. If such transferor is a man of substance, and he has actually signed the bill himself, the holder will be protected in case any of the previous signatures turn out to be forgeries, as he can sue the transferor upon the consideration. It will be recollected that the indorser enters into certain engagements by indorsing the bill, and is estopped from denying certain facts, including the genuineness and regularity in all respects of the drawer's signature and all previous indorsements (sect. 55). If, however, a holder does manage, in spite of a forgery, to obtain the amount of the bill, he cannot retain the money. The bill is not discharged, and the true owner may compel the person who has paid the bill to give it up, and such person has a right over as against the holder who has been wrongfully paid. In the ordinary way it is the acceptor who liquidates the bill. If, then, payment is made to a holder of a forged bill by the acceptor, and the bill is delivered up, the rightful owner can demand the bill back and can sue the acceptor either on the instrument or upon the consideration. The acceptor will then have a right of action against the holder for what is called "money had and received," or for conversion of the bill. It will then be the turn of the holder to seek his remedy against his transferor. The transferor will then proceed against his own transferor, and so on. Last of all the indorser or other person

who took through the forged indorsement will become possessed of the bill, and his remedy will generally be of no avail. It will have been observed that the rightful owner of a bill which has been forged with the owner's signature has his first right of action against the acceptor, if the acceptor has paid the bill. If it happens that the acceptor has paid the holder, and the holder cannot be found, it is the acceptor who is the sole loser. There is no one against whom he can proceed.

Banker's Liability.

As leading up from what has been stated at the conclusion of the last paragraph, a banker is in no better position than any other person as to paying bills bearing forged indorsements, with the exception of bills drawn payable on demand upon himself, that is, of cheques. Many bills are made payable at certain banks. A banker should, therefore, make special arrangements with his customers so as to minimise his chances of loss. If he fails to do so, and pays a bill bearing a forged acceptance or a forged indorsement, he cannot charge his customer with the amount paid. It is a banker's duty in the case of bills to see that all the indorsements are genuine—the acceptor's signature he is fully acquainted with in the ordinary way. He is not bound, however, to inquire into the genuineness of the signature of the drawer, as the acceptor himself, by the fact of accepting, is estopped from denying the genuineness of the signature of the drawer (sect. 54). A banker who has paid a forged bill must give immediate notice to the holder whom he has paid that the bill is a forgery, so that such holder may at once recover against antecedent parties.

Relief.

It appears that the only possibility of relief is in those cases where the conduct of the party against whom such relief is sought has precluded him from the right of setting up the forgery in defence. The forgery cannot be ratified, and it renders the bill *primâ facie* valueless. Thus, in an old case, a bill bearing a forged acceptance was negotiated to a holder in due course. The holder discovered the forgery and threatened to prosecute the forger, but was prevailed upon not to do so by the acceptor who wrote him a letter stating, "I hold myself responsible for the bill . . . bearing my signature." It was held that the acceptor was not liable on the bill, as the forgery of his signature could not be ratified. But where an acceptance was really forged, and

the holder in due course having been informed that such was the case wrote to make inquiries of the acceptor about it, and the acceptor replied that the signature was genuine, it was held that his conduct was such as to preclude him from setting up the forgery in an action on the bill. As to the other grounds of defence, through negligence, etc., each case must depend upon its own facts, and it will be a question for a jury to state what is the nature of the whole transaction, and for the court to decide upon the liability resting upon the parties to the bill upon the jury's findings. In order to prevent difficulties arising, the court will restrain by injunction the negotiation of a bill held under a forged signature, or order it to be given up for cancellation. Also a defendant who believes that a bill is forged may at any time, by notice in writing, require the bill to be produced for his inspection.

As illustrative of what may or may not amount to negligence, and so entitle a person to relief through paying a bill bearing a forged indorsement, the cases of *Arnold v. Cheque Bank*, 1876, 1 C.P. 578, and *Bank of England v. Vagliano*, 1891, App. Cas. 107, may be of interest.

Arnold v. Cheque Bank.

In the first case the plaintiffs, who were merchants at New York, purchased a draft drawn upon Smith, Payne & Co., London, and made payable to the plaintiffs on demand. The plaintiffs indorsed the draft specially to Firth, Boon & Co., of Bradford, and enclosed it in a letter addressed to them which was placed in a letter box in their office to be posted in the usual way. The letter was stolen by a clerk in the employ of the plaintiffs, who forged an indorsement of Firth, Boon & Co., and procured the defendants, London bankers, to present the draft and obtain the money, which was placed by them to the account of a person acting in concert with the clerk, upon whose cheques the money was almost immediately drawn out. In an action for money had and received, the defendants, in order to show that the negligence of the plaintiffs in the custody and transmission of the draft afforded facilities for the fraud, and so estopped them from suing for the money, tendered evidence that it was a usual and almost invariable practice among merchants sending large remittances from abroad to send, besides the letter containing the remittance, a letter of advice by the same or the next mail. This evidence was rejected, on the ground that the alleged negligence was collateral only to the transaction giving rise to the

action. It was held that the plaintiffs' right to the draft, and to sue for the proceeds thereof in the hands of the defendants as money received to their use, was not affected by the felonious act of the clerk, and that the evidence tendered was properly rejected. The principles to be deduced from this case are (1) Negligence in the custody of a draft or in its transmission by post will not disentitle the owner of it to recover the draft or its proceeds from one who has wrongfully obtained possession of it, and (2) Negligence, to amount to an estoppel, must be in the transaction itself, and be the proximate cause of leading the third party into mistake, and also must be the neglect of some duty which is owing to such third party or to the general public.

Bank of England v. Vagliano.

Reference has been already made in Chapter VI to the case of *Bank of England v. Vagliano*. That reference was for the purpose of indicating who is a fictitious person. But it is also of importance as showing, in contradistinction to the case of *Arnold v. Cheque Bank*, what will constitute negligence so as to make a party responsible for losses arising through forgeries. There the conduct of Vagliano was such as to lead to forgeries. But for his negligence the bills could never have come into existence, and a proper system of supervision would have disclosed Vucina's frauds before they had reached the extent of £70,000. In addition, the payments made by the Bank were in pursuance of Vagliano's letters of advice, giving the dates, numbers, and amounts of the bills coming forward, and the entries in the pass book of all the payments made had never been objected to by Vagliano at all. The negligence alone was sufficient to satisfy three of the judges that it was Vagliano and not the Bank who should suffer for the losses incurred, without any question as to the fictitious payee.

Unauthorised Signature.

A forged signature must be distinguished from an unauthorised signature, though the effect of the two is the same, in the absence of a ratification of the unauthorised signature. Every forged signature is, of course, unauthorised, but it does not follow that every unauthorised signature is a forgery. For example, a member of a partnership firm may sign a bill in the firm's name. He may have authority to sign the name, but he may not have an authority to sign bills. It is then a question of fact as to whether a bill so signed bears an authorised signature

or not. It must always be remembered that a person who takes a bill bearing a procuration signature must be on his guard, and inquire as to the circumstances under which the authority to sign has been given. It is not necessary that the authority should be given in writing. This necessity for carefulness is specially provided for by sect. 25 of the Act, which has been already dealt with, and to which reference should be made. Two illustrations may make the point as to unauthorised signatures clearer. A, a partner in a trading firm, fraudulently accepted a bill in the firm name for a private debt of his own. It was negotiated to a holder in due course. In an action on the bill it was held that the firm was liable under A's signature. Any member of a trading firm may sign on behalf of the other members, and unless there are suspicious circumstances connected with the case the firm must take the consequences (*Hogg v. Skeen*, 1865, 18 C.B., N.S. 432). On the other hand, where a partner fraudulently indorsed a bill in the firm name to a person who afterwards received payment from the acceptor, such person being aware of the fraud, it was held that the money was recoverable (*Heilbut v. Nevill*, 1870, L.R., 5 C.P. 478). The remarks made in connection with forgery as to payment being made through or under the signature must be borne in mind. The fact that there is a signature on a bill which is not authorised is not sufficient to render it valueless. It must be such a signature as is necessary in order to give the holder a title to the bill itself. The chief difficulty which may arise, however, is where an incomplete instrument has been given, and a definite authority imposed as to the manner in which the document is to be filled up (sect. 20). If the person to whom an inchoate document is delivered exceeds his authority, he becomes liable to the person whose signature he has obtained for any loss arising through such excess of authority. But if the bill is transferred to a holder in due course there is no defence to an action upon it. The wording of the bill may be unauthorised, but the signature is neither a forgery nor is it unauthorised, and the holder has a perfectly good title. See the case of *Herdman v. Wheeler*, 1902, 1 K.B., 361, to which reference has already been made. The latter portion of sect. 24 specially provides that an unauthorised signature, not amounting to a forgery, may always be ratified. This is in accordance with the general law of agency.

The two sections to which attention has been directed in the present chapter, 24 and 25, deal entirely with forged and unauthorised signatures. The placing of such signatures upon a bill makes the document worthless, just as a coin of the realm is counterfeit if it is not composed of the proper proportion of metals and does not come from its proper source. The holder of such a bill may obtain satisfaction from his immediate transferor, but as against all other parties he is helpless if the forgery is discovered before payment, and he must refund, if called upon to do so, should he have succeeded in getting payment before the discovery of the forgery. But in addition to invalidity arising through a forged or unauthorised signature, there are other causes which may render a bill of no value in the hands of its holder. By sect. 64 of the Act it is provided that "where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers. Provided that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor." This proviso made an important change in the law. At common law a material alteration of a bill, no matter by whom made, avoided and discharged the bill, except as against a party who had made, authorised, or assented to the alteration. But although the bill was avoided a holder in due course might always have sued upon the consideration.

Alteration.

The second sub-section of sect. 64 gives instances of what alterations are material, viz., "any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent." But these are far from exhaustive. It is clear, however, that any alteration is attended with danger, and that any tampering with such a document as a bill of exchange is likely to lead to endless difficulties. Without going into particulars as to what have been held to be material and what immaterial alterations, it may be stated generally that an alteration is material "which in any way alters the operation of the bill and the liabilities of the parties,

Material Alteration.

whether the change be prejudicial or beneficial." In the words of Brett, L.J., in *Aldous v. Cornwell*, 1868, L.R., 3 Q.B. 573, "Any alteration seems to me material which would alter the business effect of the instrument, if used for any business purpose." The materiality of an alteration is not a question of fact, but a question of law. The alteration, moreover, must be one made after the bill is complete. For example, the insertion of a date, though it turns out to be incorrect, does not invalidate a bill (sect. 12). And where it appears on the face of a bill that an alteration has been made, it is incumbent upon the person who is the holder and is suing upon it to show the circumstances under which the alteration was made, whether it was the correction of an error, whether it was made before the issue of the bill, or whether, if material and made after the bill was issued, it was made with the assent of all the parties to it. As regards alterations, it is seen how careful a person should be who takes a bill of exchange. Various other cautions have been pointed out, and last of all is this one—never take a bill which appears to have been altered in any way, unless the alteration has been assented to by all the parties to the bill. The holder will probably find that he is deceived when the time for payment comes round. And it appears that the holder cannot even sue upon the consideration for the bill unless he shows, (1) that the bill was negotiated to him after the alteration was made, and that he was ignorant of the alteration ; or (2) that if the bill was altered whilst in his possession and under his control, there was no intent to commit a fraud by the alteration, and that the defendant would not have had any remedy over on the bill, if there had been no alteration.

An excellent illustration of the law on the matter of alteration in a bill and the value of the proviso added to sect. 64 is shown by the case of *Scholfield v. Earl of Londesborough*, 1896, App. Cas. 514. A bill for £500 was presented for acceptance written upon a stamped paper bearing a stamp of much larger amount than was necessary, and with spaces left vacant. The acceptor wrote his acceptance and handed the bill to the drawer, who fraudulently filled up the spaces and turned the bill into one for £3,500, the stamp being sufficient to cover this last-mentioned amount. The bill got into the hands of a *bonâ fide* holder for value who sued the acceptor for the total amount. The

Scholfield v. Londesborough.

acceptor admitted his liability as to £500, but denied the rest. In this contention he was held to be correct. It was also decided that the acceptor is under no duty to take precautions against fraudulent alterations in a bill after acceptance. There is no privity of contract between him and subsequent parties to the bill. Upon an analysis of this case it will be seen how clearly it falls within the section. The bill was *primâ facie* avoided, except as against the party who himself made, authorised, or assented to the alteration and subsequent indorsers. But as the alteration was not apparent and the bill had got into the hands of a holder in due course, it was not avoided to the amount for which it had been originally accepted, viz., £500. If it had been held that the leaving of blank spaces amounted to negligence as between the parties, the decision would have been different. Much reliance was placed in argument upon the analogous case of *Young v. Grote*, 1827, 4 Bing. 253, which had reference to a cheque drawn with blank spaces. This case, however, will be discussed hereafter (p. 136), as well as that of *Colonial Bank of Australasia v. Marshall*, 1906, App. Cas. 559, which threw much doubt upon the decision in *Young v. Grote*. Indeed, in the case of *Macmillan v. London Joint Stock Bank*, 1917, 2 K.B. 439, the Court of Appeal looked upon it as overruled. Fortunately, however, for the bankers of this country, this decision was reversed when the case came before the House of Lords—*London Joint Stock Bank v. Macmillan*, 1918, App. Cas. 777—the facts of which are given at length on page 136.

CHAPTER XIII

DISCHARGES

So long as a bill of exchange is in existence and valid, there are certain rights of action upon it, but when these rights have been extinguished the bill is discharged. The bill has ceased to be negotiable, and even a holder in due course cannot then acquire any right of action upon the instrument. It must not, however, be supposed that a holder has no remedy at all. He may be able to sue quite independently of the bill. It is the advantage derived from the possession of a bill of exchange when an action has to be brought, and the power of negotiating the same, which make it so peculiarly valuable. For this reason, therefore, it is necessary to distinguish between the right of action on a bill and the right of action arising out of a bill transaction. The former, as it has been shown, is transferred by negotiating the instrument, whereas the latter cannot be transferred except by a legal assignment. And, in addition, any right of action on a bill is extinguished when the instrument is discharged, whereas a right of action independently of the bill may still remain. It has been pointed out, however, that the failure of the holder of a bill to give proper notices of dishonour may not only put an end to a party's liability upon the bill, but also to liability upon the consideration itself. This needs no further mention here.

Discharge.

One or two illustrations will make these points quite clear. A bill is accepted by two or more persons jointly. One of the acceptors pays the amount of the bill at maturity. The bill is discharged, and there is no longer any right of action upon it. But the discharge of the bill does not prevent the acceptor who has paid from claiming contribution from the other joint-acceptor or joint-acceptors. The right of action, however, is independent of the bill and not upon it. Again, if an accommodation bill is paid by the acceptor the bill is discharged, but the acceptor has a right of action for indemnity against the person accommodated.

Illustrations.

The most obvious and general method of discharging or extinguishing the right of action upon a bill is payment by the acceptor

according to the tenor of the instrument. "A bill is discharged by payment in due course by or on behalf of the drawee or acceptor" (sect. 59, ss. 1). "Payment in due course" is defined as payment made at or after the maturity of the bill to the holder in good faith and without notice that his title to the bill is defective. These various points require particular attention. If the acceptor pays at or after maturity the bill is discharged, and no action can then be brought upon it. In considering the date of maturity of a bill, the whole of the last day for payment must be included (*Kennedy v. Thomas*, 1894, 2 Q.B., 759). But if the bill is negotiated back to the acceptor, the acceptor can re-issue the bill, since it is not discharged. And this re-issue may take place any number of times before the maturity of the bill if there is a fresh consideration for each issue. When such a bill is re-issued a holder in due course has a right of action against all the parties to it, just as in the case of a first issue. (See page 58.) For example, A accepts a bill which is negotiated through several people, and at last gets into the hands of B. B indorses it for value to A before maturity. A immediately negotiates it by handing it for value to C. At maturity C can sue all the parties to the bill. Again, if a bill which is indorsed in blank is paid by the acceptor before it is due, and the acceptor afterwards loses it before maturity, a holder in due course can recover on the bill, having his right of action against all parties to the bill, including the acceptor. It is a matter of the utmost importance to an acceptor who pays a bill before maturity to get it into his possession and to destroy it at once unless he re-issues it. If he fails to do so he is in exactly the same position as if the bill had been paid before maturity and lost. Thus, in an old case, A accepted a bill and paid the amount of it before maturity to B who was the holder. A allowed B to retain the bill, and B afterwards indorsed it, whilst it was still current, to C for value, and without any notice of payment having been made. It was held in an action on the bill that C was entitled to recover from A. The above remarks as to premature payment can only apply to bills which are payable at a determinable future time. They have no reference to those which are payable on demand, since such bills cannot be prematurely paid, being due the moment they are presented. If, then, an acceptor pays a bill payable on demand and takes it, he cannot

Payment in Due Course.

re-issue it at all. If he does so it is valueless even in the hands of a holder for value. No person should, therefore, take a bill payable on demand from the acceptor in the first instance if the bill bears the indorsement of the payee or of any other person. It follows naturally from what has been said above that where the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged (sect. 61).

The words "in his own right" are important, and their significance is shown by the case of *Nash v. De Freville*, 1900, 2 Q.B. 72, which, although dealing with promissory notes and not with bills, applies equally to the latter, for which reason the word "acceptor" is substituted for "maker" and "drawer" for "payee"—the acceptor of a bill being legally in the same position as the maker of a note. The facts of the case were as follows: The defendant accepted three bills to cover his indebtedness to the drawer, and subsequently accepted two other bills, in substitution for the former three and to cover further advances. All the bills were payable on demand, but it was understood as between the acceptor and the drawer, who was also the payee, that the bills should not be negotiated. Nevertheless the payee, the drawer, indorsed all five bills to the plaintiff. After the payee had negotiated the bills, the defendant paid the amount due upon the last two, but he did not ask for the bills nor did he know that the payee had parted with them. At a later date the payee obtained the five bills from the plaintiff by fraud, and handed them to the defendant. In an action brought by the plaintiff against the defendant it was held that the defendant, when he received back the bills, did not become a holder for value, since the previous satisfaction by him was not a consideration given by him when he received back the bills, and that as they were then overdue, being payable on demand, he acquired no better title than the payee had while they were in his hands, and that the plaintiff, being entitled to disaffirm the transaction between himself and the payee, by which the latter had obtained possession of the bills, could recover in the action. If there had been no fraud on the part of the payee, and the bills had been returned to the acceptor simply because he had paid the amount of them in the past, the bills would have been discharged and the plaintiff could not have recovered.

Nash v. De Freville.

The payment must be made to the person who is the holder or to some person duly authorised by him in order to operate as a discharge. If there is any doubt on the part of the acceptor as to the identity of the holder, an indemnity should be asked for, though it need not be given. There can be no doubt that possession is *primâ facie* evidence of the identity of the holder, at least in the United Kingdom, and that where a holder does present a bill for payment to the acceptor, the latter must pay or refuse payment at his own peril. If it turns out eventually that he has paid the wrong person he may be called upon to pay a second time; if he refuses to pay he runs the risk of having an action brought against him. But where it can be shown that the payment has been made by the acceptor in good faith (as to which see sect. 90), and without any notice of defect of title, the payment is valid and the bill is discharged. This may be illustrated as follows. A bill is accepted and gets into the hands of the holder who has stolen it, or who has obtained it by fraud. In each case there is a defect of title. But yet if the bill is indorsed in blank, that is, does not require any further indorsement to make it transferable, the acceptor may lawfully pay the holder, provided he acts in good faith and without any knowledge of the defect of title to the bill, and the bill will be discharged. If, on the other hand, the bill had been specially indorsed, and the indorsement forged, the acceptor cannot discharge the bill, however innocently he acts. Thus, suppose that James Smith is the payee or indorsee of a bill, and that eventually the holder at maturity is another person of the name of James Smith, who indorses the bill. The acceptor satisfies himself that the name of the holder is correct and pays the amount to the wrong person. It is immaterial how the holder became possessed of the bill; the payment to him is of no avail, the bill is not discharged, and the acceptor must pay again. This is owing to the fact that a forgery is not a mere defect of title. It renders the instrument valueless (sect. 24).

Payment to Whom.

Payment will not operate as a discharge of a bill unless it is made by or on behalf of the acceptor, and made at or after maturity. Payment by the drawer or by an indorser does not, except in the case of an accommodation bill, where the drawer or the indorser is the person accommodated, act as a discharge. It is necessary, however, to examine the

Payment by Whom.

position of the parties in different cases. Where a bill is drawn payable to, or to the order of a third party, and the drawer himself pays the holder, although the bill is not discharged the drawer cannot re-issue it. His only remedy is against the acceptor who has not met it when presented to him for payment. If the bill is payable to the drawer's order and after being dishonoured is paid by the drawer, the drawer in addition to his remedy by action against the acceptor may also strike out his own and all subsequent indorsements and again negotiate the bill. It cannot be considered advisable, however, for persons to take such a bill unless there are special circumstances for so doing. An indorser who pays the holder and takes the bill, is in the same position as the drawer to whom or to whose order a bill is made payable. He may sue the acceptor or any antecedent parties, or he may, if he thinks fit, strike out his own and subsequent indorsements, and once more negotiate the bill.

If the whole of the amount of a bill is not paid in due course by the acceptor, but a part only, the right of the holder is reduced by the amount paid, and he may sue for the balance.

Part Payment. In the case of part-payment by the drawer or the indorser, where the bill is retained by the holder—for a holder is not bound to give up his document until he has been paid in full (sect. 52, ss. 4)—the holder may still pursue his remedies by action; but if he recovers the amount from the acceptor, he is a trustee as to the balance beyond what is due to himself on the bill, and he is bound to hand over that balance to the drawer or the indorser who has made the part payment. Thus, X is the holder of a bill for £250 drawn by A, accepted by B, and indorsed by numerous parties, including C. B does not pay the bill at maturity, and after the proper notices of dishonour have been given, X has an interview with C and the latter pays him £100, not in settlement, but on account. X, as holder, sues one of the other parties to the bill, and recovers the whole £250. He is a trustee as to £100 for C, and must pay that amount over to C.

It is not always possible for a person who has paid a bill by mistake to recover the money from the person to whom he has paid it, and who cannot give a discharge for the bill owing to forgery, alteration, or cancellation; but there appear to be two rules which may be regarded as summing up the law upon this subject. The

first is that the person who pays a bill which has been forged, altered, or cancelled may reclaim the money if he has been deceived through the negligence of any party who ought to have exercised care with regard to him, and if he himself has not been guilty of any negligence. The second is that money similarly paid can be recovered from the person to whom it was paid, if the latter was not acting throughout in good faith.

Recovery of Money Paid by Mistake.

When a bill is paid by the acceptor it is sufficient for the holder to give up the document. It sometimes happens that the holder writes a receipt on the back of the bill. Formerly no stamp was necessary in such a case; but by the Finance Act, 1895, sect. 9, it has become incumbent upon the holder (except in the case of a banker) to stamp the receipt the same as any other.

Receipt.

When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged, that is, there is no longer any right of action upon it. At common law the renunciation was good if made verbally, and even without consideration (*Foster v. Dawber*, 1851, 6 Ex. 839). Now, by the Act, the renunciation must be in writing, unless the bill is delivered up to the acceptor. It is to be noted that the absolute and unconditional renunciation must be made to the acceptor at or after maturity. There cannot afterwards be a holder in due course. If it is made before maturity and the bill again gets into circulation, the rights of a holder in due course who has had no notice of the renunciation are in no way affected. A holder may renounce his particular rights against any other party to the bill, other than the acceptor, before, at, or after its maturity. This must also be done in writing, but no renunciation of this kind discharges the bill. All rights are preserved against the other parties. Thus, the holder of a bill before maturity writes to the first indorser saying that he renounces all rights in the bill against him. The whole of the indorsers are discharged. But the drawer and the acceptor still remain liable. If the bill is afterwards negotiated to a holder in due course no renunciation is of any value. The holder in due course who has taken the bill without any notice of renunciation has his rights against all the parties as though nothing had been done. It appears that

Renunciation.

a bill is discharged if it is delivered at or after maturity to the executors or administrators of a deceased acceptor, but this is not so if the bill is delivered to the devisee of the acceptor (*Edwards v. Walters*, 1896, 2 Ch. 157). It is very uncommon to find cases of renunciation in practice. It would always be advisable where there is a renunciation that a note or memorandum of it should be indorsed upon the bill. Such a note would serve as notice to any person to whom the bill was afterwards negotiated.

Another method of discharging a bill is by cancellation on the part of the holder or his agent, the cancellation being intentionally made and apparent on the face of the bill. And just as a holder may renounce his rights against any particular indorser, as was shown in the last paragraph, so he may discharge any indorser by intentionally cancelling that indorser's signature; and where an indorser is discharged all subsequent indorsers, who might have had a right of recourse against him, are discharged. In the words of the Act, " Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged. In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled is also discharged " (sect. 63). Thus, the holder of a bill intentionally strikes out the acceptor's signature. The bill is discharged, and no one can maintain an action upon it. But if the cancellation is not apparent upon the face of the bill, and the holder afterwards negotiates it to a holder in due course, such holder in due course is not prejudiced by the cancellation and can sue the acceptor. Where a cancellation is made unintentionally, or under a mistake, or without the authority of the holder, such cancellation is entirely inoperative. But in any action upon a bill where the bill itself or any signature thereon appears to have been cancelled " the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority " (sect. 63, ss. 3). In such a case the holder ought at once to mark the bill or the cancelled signature " cancelled by mistake," and add his signature or his initials.

Cancellation.

A bill is avoided, that is, no action can be maintained upon it, when there has been a material alteration made without the assent

of all parties, except as against the party who has made, authorised, or assented to the alteration and all subsequent indorsers. This matter, however, has already been dealt with in the last chapter, and no further reference need be made to it in the present place.

Alteration.

A few words may be added as to the effect of the payment of debts by bill. Such payment is, in fact, an extension of credit. A creditor may sue his debtor as soon as the debt is payable. But if the creditor takes a bill for the amount, any remedy for the debt is suspended during the currency of the bill and until it is dishonoured. But the debt revives immediately if the bill is not met at maturity, and, as it has been pointed out, where a party chargeable upon a bill commits an act of bankruptcy, the holder, although the bill is not yet due, can present a bankruptcy petition upon it (*Ex parte Raatz*, 1897, 2 Q.B. 80). Little difficulty arises when it is the debtor himself who is the acceptor, because immediate recourse can be made to him if he fails to meet the bill when it becomes due. But special caution is necessary when it is an intermediate party who liquidates his debt by transferring a bill of which he is the bearer or the indorsee. Unless he indorses it he is never liable on the instrument, though he may be sued upon the consideration in case the bill is not paid. If he indorses it the holder must take care to give the proper notices of dishonour, otherwise the debtor is not only released from his liability on the bill, but also on the consideration. What are the warranties of a transferor of a bill by delivery have been mentioned (page 86), and how his liability varies according as the bill was given in payment of an antecedent debt or for some other consideration (page 48). But even in the case of a transfer by delivery in settlement of a debt it is always open for the transferor to show, if he can, that the transfer to the holder was intended to be in full satisfaction of his indebtedness, and that the transferee, his creditor, accepted it as such; and if he succeeds in doing so he is absolutely freed from all liability even upon the consideration, provided he has acted in good faith throughout.

Payment by Bill.

Sometimes the various parties to a bill agree that it shall be renewed at maturity instead of being paid. This renewal consists in giving a new bill for the old one. The period of credit is then extended in this case also. If the second bill is dishonoured, the

rights of the parties on the first bill are revived. But one party alone cannot agree with the acceptor to renew a bill. The drawer and the various indorsers are in the position of sureties, and it is well known by the ordinary law of principal and surety that a surety is always discharged if the principal agrees to give the debtor further time without the consent of the surety.

Renewal of Bill.

It is a principle of law that a debtor cannot liquidate a debt of an ascertained amount by the payment of a smaller sum than that which is due. Thus, a debt of £100 cannot be settled by the payment of £75. The creditor is entitled to sue for the £25 difference, there being no consideration for the abandonment of the excess. If the amount of the debt is uncertain a smaller sum will liquidate a larger one. But if something other than money is given, *e.g.*, a negotiable instrument, there is supposed to be an advantage conferred upon the recipient, which is the consideration for the abandonment of an excess, and therefore a bill for £75 will satisfy a debt of £100, even though the £100 is an ascertained amount. There is what is known as " accord and satisfaction." The transferor, then, of a bill for £75, even though he indorses the bill, provided he has acted in good faith, is only liable in any case to pay the £75, and he may escape altogether if the holder fails in any of his duties as to notice of dishonour. If, however, he is a transferor by delivery, he cannot be held responsible at all, unless he falls within the proviso stated in the last paragraph but one, that is, unless it is made perfectly clear that the bill was taken as security merely, or in part payment, and was never intended to act as a complete satisfaction and discharge of his debt.

Accord and Satisfaction.

It is always a question of fact whether there has been accord and satisfaction, and an illustration may be provided by reference to the case of *Day v. McLea*, 1889, 22 Q.B.D. 610, which is strictly in point, although the document there in question was a cheque. There the defendant sent a cheque to the plaintiff which was drawn for a less amount than the debt which was owing. Along with it there was forwarded a form of receipt which contained these words, " in full of all demands." The plaintiff retained the cheque and sent a receipt to the defendant on account. Afterwards the plaintiff sued for the balance. It was held that the mere fact of the retention of the

Illustration.

cheque was not at all conclusive that there had been accord and satisfaction. In his judgment, Bowen, L.J., said, " It seems to me, as a matter of principle as well as of authority, that the question whether there is an accord and satisfaction must be one of fact. If a person sends a sum of money on the terms that it is to be taken, if at all, in satisfaction of a larger claim, and if the money is kept, it is a question of fact as to the terms upon which it is kept. Accord and satisfaction imply an agreement to take the money in satisfaction of the claim in respect of which it is sent. If accord is a question of agreement, there must be either two minds agreeing or one of the two persons acting in such a way as to induce the other to think that the money is taken in satisfaction of the claim, and to cause him to act upon that view. In either case it is a question of fact."

With this last case should be compared that of *Hirachand Punamchand v. Temple*, 1911, 2 K.B. 330, which seems to show that where payment of a smaller sum is made by a third party, the amount being offered in settlement and kept without a word by the creditor, there is no right remaining to sue the debtor for the difference.

CHAPTER XIV

MISCELLANEOUS

THE present chapter is concerned with certain points affecting bills of exchange, some of which have been already dealt with, but which require more particular notice than has hitherto been given to them. It will be recollected that by sect. 15 of the Act it is provided that the drawer of a bill or any indorser may insert therein the name of a person to whom the holder may resort in case of dishonour—the referee in case of need. Such person may become an acceptor for honour, that is, he may signify by an acceptance written on the bill that he will be surety for its due payment in certain circumstances. But he is not the only person who can make himself liable, for sect. 65 is as follows: "Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder intervene and accept the bill suprà protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn." The effect of this is that the bill is kept back until its maturity, and the holder is given an additional person against whom he may proceed if the bill is not paid when due. Thus, A draws a bill upon B and it is indorsed by C and D before it has been presented for acceptance. E is the holder and presents it. Acceptance is refused. This is a dishonour of the bill, and E is entitled to sue A, C, or D at his pleasure. It might be extremely inconvenient for any of these parties to have to meet the bill before maturity, and so this section comes as a relief, though it will be noticed that the holder is not bound to take this course. But if he does protest the bill, any person can then come forward and accept the responsibility of the acceptor, and the holder is placed in the same position in which he would have been if the drawee had accepted on presentation. The liability of the acceptor for honour is practically the same as that of an ordinary acceptor, for by accepting he engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid

Acceptance for Honour.

by the drawee. But the bill must be duly presented for payment, be protested for non-payment, and due notice of these facts must be given to the acceptor for honour. The extent of the liability, however, is on the assumption that the acceptance is for the honour of the drawer. If it is an acceptance for the honour of an indorser he is only liable to the holder of the bill and any person subsequent to the indorser for whose honour he has accepted. He is bound by the same estoppels as an ordinary acceptor (sect. 54), and also by those which are binding upon the indorser for whose honour he has accepted (sect. 55).

The acceptance for honour must be written upon the face of the bill and signed by the acceptor for honour or by his duly authorised agent. It must also clearly indicate that it is an acceptance for honour. It is not necessary that such an acceptance should be for the entire amount of the bill. It may be accepted for part only. It is also essential that the acceptor should state for whose honour he accepts, otherwise it will be presumed that it is for the honour of the drawer. Where a bill is payable a certain number of days after sight and is accepted for honour, the maturity of the instrument is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

How Made.

The rules as to presentment are set out in sect. 67 : " (1) Where a dishonoured bill has been accepted for honour suprà protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need. (2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it is protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him. (3) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment (see sect. 46). (4) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him."

Presentment.

Just as a person may intervene and accept for honour when a bill is dishonoured by being refused acceptance by the drawee, so any person may similarly intervene when a bill has been protested for non-payment after having been duly accepted. The intervening party may pay suprà protest for the honour of any person liable thereon, or for the honour of the person for whose account the bill is drawn. The rules as to payment for honour are contained in ss. 2-7 of sect. 68 of the Act, and are as follows: "(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference. (3) Payment for honour suprà protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it. (4) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays. (5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for (that is, substituted for) and succeeds to both the rights and duties of the holder as regards the party for whose honour he pays, and all parties liable to that party. (6) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages. (7) Where the holder of a bill refuses to receive payment suprà protest he shall lose his right of recourse against any party who would have been discharged by such payment."

Payment for Honour.

Instead of being drawn as one document, a bill is sometimes drawn in several parts, especially when it has to be sent from one country to another. This is known as drawing "in a set." Each of the parts is required to be numbered, and must refer to the other parts, but it is the whole of the parts which constitute one bill. The following are specimens of one of the parts of a bill in a set:—

Bill in a Set.

London, Oct. 1*st*, 1918.

£500 0 0

Thirty days after sight of this first of exchange (second and third of the same tenor and date being unpaid) pay to A B or order the sum of five hundred pounds for value received.

To *Y Z.*

Messrs. X & Co.,
New York.

London, Oct. 15*th*, 1918.

Exchange for 50,000 *francs.*

At forty days after sight of this first of exchange (second and third unpaid) pay to the order of M. Jean Berthelot fifty thousand francs, for value received, and place the same to account as advised.

To *Joseph Brown.*

M. E. Dumont,
Bordeaux.

Payable at——

The other parts of the bill will refer to the first and third, and the first and second respectively instead of to the second and third. Only one part of a set requires to be stamped, and only one part is accepted by the drawee. If the drawee accepts more than one part, and the accepted parts get into the hands of different holders in due course, he is liable on every such part just as though it was a separate bill. The remaining parts of sect. 71 of the Act, which is that dealing with a bill in a set, are as follows " (*a*) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills. (*b*) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him. (*c*) Where the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof. (*d*) Where any one

part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged."

Foreign Bill of Exchange.

It will be recollected that an inland bill is defined by sect. 4 as one "which is or on the face of it purports to be (*a*) both drawn and payable within the British Islands, or (*b*) drawn within the British Islands upon some person resident therein." Any other bill is called a "foreign bill." A foreign bill is generally drawn in a set, as shown in the last paragraph, where also a specimen is given. The law affecting foreign bills is, in the main, the same as that which is applicable to inland bills, though the following differences must be noticed: (1) A foreign bill is frequently made payable at one or more "usances." By usance is meant customary time, that is, the time of payment as fixed by custom, having regard to the place where the bill is drawn and the place where it is payable. (2) Although an inland bill must be written on duly stamped paper—except where the duty is one penny only and the bill is not one payable at sight, etc., when an adhesive stamp will suffice[1]—a foreign bill need not be stamped before it is issued, unless the law of the place of issue requires the stamping. It must, however, be stamped before it can be negotiated in the British Isles. (3) If a foreign bill is dishonoured, it must be protested.

Requisites in Form.

It is for the convenience of international commerce that there is so close a general resemblance between bills of exchange in different countries. Indeed, it has been proposed to make the law dealing with bills uniform throughout the chief trading communities. But it must not be assumed that a form used in one country will always be able to be used in another. Every nation has a right to impose its own conditions, and sect. 72 of the Bills of Exchange Act deals with those cases where there is a conflict of laws. As regards the form, the validity is determined by the law of the place of issue, and as to all supervening contracts, such as acceptance, indorsement, or acceptance supra protest, the validity as well as the interpretation of each is determined by the law of the place where such contract is made. It is, however, provided that where an inland bill is indorsed in a foreign country the indorsement is to be interpreted, as regards the payer, according to the law of the United Kingdom,

[1] But see the chapter on Stamps, p. 170.

A few examples may make the position clearer. The French law requires that the value for which a bill is drawn should be expressed. In England that is not necessary. A bill drawn in England—the place of issue—and payable in France is valid, although no value is expressed. A bill is drawn in France and no value is expressed. It is, consequently, invalid in France. It is sent to England and indorsed in this country. The indorser is liable upon the instrument, as the indorsement is valid according to English law, although the drawer is not liable. Again, an English bill which is indorsed in blank is transferred by delivery in a country which does not admit of such a method of negotiation. The transfer is good, and the transferee obtains a good title to the bill. It is obvious, therefore, that great care is required in dealing with foreign bills, or with inland bills which are negotiated abroad, seeing that various systems of law may be brought into play. Thus, if a bill is drawn in England, accepted in Germany, and indorsed in France, there are the legal systems of three distinct countries to consider—England, Germany, and France.

Illustrations.

The case of *Alcock v. Smith*, 1892, 1 Ch. 238, draws together various points connected with the negotiation of an inland bill abroad, and the facts are worthy of notice. A bill of exchange, drawn and accepted by two English firms, and payable in England to the order of X & Co., was indorsed in Norway by X & Co. to the order of M, who indorsed it in blank and handed it in Norway to S, an agent for A, an Englishman residing in London, and an English firm of A & Co., carrying on business in London, in which A and J were partners. While the bill was in the hands of S and still current, it was seized in execution under a judgment obtained in Norway by a creditor of J, and, after the bill had become overdue, it was sold by public auction to M. The seizure and sale took place in the ordinary course of Norwegian law, under which a perfect title was conferred by the sale on M freed from all equities—that law not recognising the English doctrine that the purchaser of an overdue bill only gets such title as his vendor had, or any difference as to extent of negotiability between a current and an overdue bill. M sold the bill in Sweden, the law of which was, at the time, the same for that purpose as that of Norway, to K, who bought in the ordinary course of business, without knowledge of any infirmity of title to the bill. K sent the

Alcock v. Smith.

bill for collection to his agents in England, the N bank. Before presentation for payment A and A & Co. obtained an *ex parte* injunction restraining the drawers and acceptors from paying the bill, and after presentation A and A & Co. obtained an *ex parte* injunction against the N bank, restraining them from parting with the bill. By arrangement, the proceeds of the bill were paid into court, and the N bank and all the defendants except K were dismissed from the action. It was held that sect. 36, ss. 2, of the Act of 1882, as to the negotiation of an overdue bill, was only declaratory of the English law when that law applied, and that, the action being in reality to recover the bill, the only question being between two persons each claiming against the other to be entitled to hold the bill, and as holders to obtain payment, and no question being raised by or affecting the payers, the case was not within the proviso of sect. 72, ss. 2 of the Act, that "where an inland bill is indorsed in a foreign country the indorsement shall, as regards the payer, be interpreted according to the law of the United Kingdom." The effects of the transactions in Norway, therefore, were to be determined by Norwegian law, and that, as according to that law their effect was to give to M a complete title to the bill and its proceeds free from all equities, the title of K prevailed over that of A and of A & Co.

Duties of Holder.

The duties of the holder of a bill of exchange which is negotiated abroad with respect to presentment for acceptance or payment, and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the Act is done or the bill is dishonoured. The importance of giving notice of dishonour within a specified time has been explained in a previous chapter, and it has been pointed out how the parties to a bill are excused from liability if this duty is omitted. But how is this affected if the law of the country in which the bill is dishonoured requires no special notice to be given? This question is answered by the decision in the case of *Horne v. Rouquette*, 1878, 3 Q.B.D. 514. There a bill of exchange, drawn in England and payable in Spain, was indorsed by the defendant to the plaintiff, who indorsed it to one Monforte, a person residing in Spain. Acceptance of the bill was refused and a delay of twelve days occurred before Monforte wrote to inform the plaintiff of the dishonour, although no reason was given for

the delay in sending the information. The plaintiff gave notice of the dishonour to the defendant immediately after he had heard of the same from Monforte. By the law of Spain no notice of dishonour by non-acceptance is required. It was held that the law of Spain prevailed, and that the defendant was not released from his liability to the plaintiff on account of any delay in giving notice by the Spanish indorsee. This case was decided before the Act of 1882, but the provisions of ss. 3 of sect. 72 incorporate that decision.

Amount of Bill.

A bill may be drawn for an amount expressed in any currency, and the only point to be considered here is as to the exact sum payable when the currency of the United Kingdom is not used. Sect. 72, ss. 4, is explicit, and runs as follows: "Where a bill is drawn out of but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable." In the example given above (page 110) the amount payable is calculated according to the rate of exchange on the date when the bill becomes due.

Due Date.

The due date of payment of a bill which is payable abroad is calculated according to the law of the country where payment is to be made. This may seem to be a matter of small moment, but it will be seen on reflection that it may be important. Thus, in England, days of grace are allowed, though they have now been abolished in almost every other country. If a bill, therefore, is drawn in London and payable in Paris at one month after date, and the date is Oct. 1st, the due date of payment in Paris is Nov. 1st, whereas if a similar bill is drawn in Paris and payable in London the due date of payment—unless a Sunday or a public holiday causes a difference—is Nov. 4th. Again, the country in which the bill is payable may, by legislation, postpone the payment of bills owing to various circumstances, and if this is done the due date of payment is determined in accordance with such legislative enactment. This is well illustrated by the case of *Rouquette v. Overmann*, 1875, L.R., 10 Q.B. 525. A bill of exchange was drawn and indorsed by the defendant in England upon French subjects resident in Paris, and was accepted by them

in Paris. The bill on the face of it was payable on Oct. 5th, 1870. Before that date the Emperor of the French, in consequence of the war with Germany, enlarged the time for the payment and protesting of bills of exchange for one month, and the time was afterwards enlarged from time to time by the Government of France for the time being. By these enlargements of time the defendants' bill did not become payable till Sept. 5th, 1871. On that day the bill was presented to the acceptors and payment refused. It was then duly protested, and due notice of dishonour, etc., given to all parties. It was held that the defendants were liable on the bill at the suit of the plaintiff, all the requirements of the French law having been complied with, and the date of payment having been postponed by legislative enactment. It is obvious, also, that difficulties may arise as to the due date of payment when there are dealings with Russia, the old style of calendar still prevailing in that country. This is generally obviated by the insertion of two dates in the bill, calculated according to the two different styles.

Great stress has been laid upon the fact that in dealing with all negotiable instruments, the holder in order to recover must have acted in good faith. It is impossible to give an exact definition of what good faith is, but sect. 90 of the Act states: "A thing is deemed to be done in good faith . . . where it is in fact done honestly, whether it is done negligently or not." The test, therefore, seems to be the honesty of a person. But each case must be decided by its own facts, and it is for the court, either a judge alone or a jury, to determine whether there has been good faith or not. There is obviously some peril about this, for juries vary greatly in the manner of arriving at a determination. Still, if they go flagrantly astray, the court will always grant a new trial. Many cases might be cited as illustrative of what has been held to be good faith. Thus, in *Raphael v. Bank of England*, 1855, 25 L.J., C.P. 33, a money changer in Paris cashed a bank note, which had been stolen, at the current rate of exchange. The note was one of several which had been stolen, and notices as to the robbery together with the numbers of the notes had been circulated all over Europe. It was proved that one of these notices had actually come into the possession of the plaintiff. But when a stranger came to him to cash the note he had either forgotten the notice or did not refer to it.

Good Faith.

He had clearly the means of knowledge, but the jury found as a fact that he was ignorant of the circumstances when he took the note for value. It was held that he had acted in good faith, and that he was entitled to the proceeds. This was, perhaps, an extreme case. But without going into the details of other cases, a portion of the judgments of illustrious judges may be quoted as showing what are the facts that a jury should take into consideration. In *Jones v. Gordon*, 1877, 2 App. Cas. 616, Lord Blackburn said: "Such evidence of carelessness or blindness as I have referred to may, with other evidence, be good evidence upon the question, whether he did know there was something wrong in it. If he was (if I may use the phrase) honestly blundering and careless, and so took a bill of exchange or a bank note when he ought not to have taken it, still he is entitled to recover. But if the facts and circumstances are such that the jury, or whoever has to try the question, comes to the conclusion that he was not honestly blundering, but that he must have had a suspicion that there was something wrong, and that he refrained from asking questions not because he was an honest blunderer, but because he thought in his own secret mind, I suspect there is something wrong, and if I make further inquiry it will be no longer my suspecting it but my knowing it, and then I shall not be able to recover—I think that is dishonesty." And in *London Joint Stock Bank v. Simmons*, 1892, App. Cas. 201, Lord Herschell said: "If there is anything which excites the suspicion that there is something wrong in the transaction, the taker of the instrument is not acting in good faith, if he shuts his eyes to the facts presented to him and puts the suspicions aside without further inquiry."

Agency.

The law of agency has advanced considerably, owing to the exigencies of commerce, and the position of an agent is not so circumscribed to-day as it was a short time ago. As far as bills of exchange are concerned the signature of an agent is provided for by sect. 91 as follows: "Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority." It is always necessary, however, to see that the authority is complete. Thus, authority to draw a bill is not authority to accept or to indorse the same. And it is

important to remember that in the case of a non-trading firm, where there can be no presumption as to the right to deal in negotiable instruments, the authority of a partner to draw cheques does not necessarily imply that he has authority to draw, to accept, or to indorse bills. As to corporations, where any instrument is required to be signed, it is sufficient if the corporate seal is used instead; but there is nothing in the Bills of Exchange Act which requires that a bill or a note of a corporation should be under seal.

Signature.

There is no difficulty as to understanding what is ordinarily understood by a signature, namely, the writing of a person's name in order to give effect to the document. The full name should always be used in order to avoid disputes, and it should be written in ink; but there are many cases which show that something less than a full signature will suffice, just as it has been held that a signature in pencil (*Geary v. Physic*, 1826, 5 B. & C. 234), or a lithographed or stamped signature, may be held perfectly good (*Ex parte Birmingham Bank*, 1868, L.R. 3 Ch. 651). But a stamped signature would not be accepted, except by special arrangement as it might have been impressed by an unauthorised person. A mere mark and initials have been held to be signatures, if they were intended to be such; but it is not wise to attempt irregularities or experiments with documents which require the accuracy of negotiable instruments. That the signature or mark must be intended as a signature has been shown by reference to the cases of *Foster v. Mackinnon*, and *Lewis v. Clay* (p. 27). Unless it was intended to authenticate the document, the signature is null and void. It is not necessary that the signature should be in any particular position, so that, if a person gives a promissory note in this form, "I, John Jones, promise to pay," and writes out the same himself, the note is good, although there is no signature appended as in the usual course of making such a note.

Computation of Time.

In the computation of time, sect. 92 of the Act provides as follows: "Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded. 'Non-business days' for the purposes of this Act mean (*a*) Sunday, Good Friday, Christmas Day; (*b*) a bank holiday under the Bank Holiday Act, 1878, or Acts amending it; (*c*) a day appointed by

Royal proclamation as a public fast or thanksgiving day. Any other day is a business day."

Dealing with Bills.

Bills, cheques, and promissory notes have become so established a necessity in commercial life that it is impossible for the average business man not to have some connection with them in the course of his career. The rights and liabilities of all parties to these instruments—for it will be shown hereafter that in most respects cheques and promissory notes are subject to the same rules as bills—have been set out at length, and it ought not to be difficult for the average person to avoid disaster, except in such unforeseen cases as bankruptcy and similar misfortunes. Still, it may not be out of place to add a few practical hints which may serve as warnings.

(1) Never draw or accept an accommodation bill, unless you are prepared to meet it whenever called upon. After it has left your possession value may be given for it, and it is no answer to a holder for value that you are only an accommodation party.

(2) When a bill has been drawn by you, endeavour to secure its acceptance before negotiating it. Non-acceptance means that the bill is dishonoured, and there is then immediate recourse to all parties, unless an acceptance for honour is obtained.

(3) Unless you are to be personally liable upon the bill, take care that any signature you place upon it, whether as drawer, acceptor, or indorser, shows clearly that you are signing in a representative capacity.

(4) Never indorse a bill without receiving value for it. If it is dishonoured you may be held responsible for its due payment.

(5) Never discount a bill for a stranger. Be sure that you know the person from whom you receive a bill, and take care that he indorses it. Otherwise he will not be liable upon the instrument, and he may not even be liable upon the consideration, for reasons which have been already given. Moreover, this indorsement will be an additional security in case any of the former indorsements or signatures should turn out to be forgeries.

(6) Examine the bill carefully. See that it is dated—though the absence of a date is not necessarily fatal to the validity of the document—that the amounts in words and figures agree, that the stamp is sufficient, that there are no apparent alterations or erasures, and that the payee has indorsed it, if the bill is made payable to him or to his order. If the bill has been already specially indorsed, the signature of the indorsee must also be on the document. If it is indorsed in blank, or payable to bearer, no indorsement is necessary.

(7) If you are the holder, present the bill for acceptance, if it has not been accepted, and for payment at the proper time. If either acceptance or payment is refused, give notice at once to every indorser and to the drawer, so as to hold each and all liable for payment.

(8) Upon payment of a bill take care that you get the document into your own possession.

II—CHEQUES

CHAPTER I

OPEN CHEQUES

THE definition of a cheque is given in sect. 73 of the Act of 1882, where it is described as "a bill of exchange drawn on a banker payable on demand." The section then proceeds, "Except as otherwise provided in this part (that is, Part III of the Act), the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque." The reader is referred to the definitions given in sects. 3 and 10, both of which have been dealt with.

Definition.

The old forms of cheques have been illustrated in the Introduction. At the present day, however, a banker generally supplies cheque books to his customers, and the form is usually as follows:—

Form of Cheque.

London, Oct. 1st, 1918.

To the Blankshire Bank, Limited.

Pay William Smith or order (or *bearer*) *three hundred and five pounds ten shillings and sixpence.*

£305 10 6. *Joseph Simpson.*

The difference between "order" and "bearer" cheques will be noticed hereafter. The stamp duty of 2d. was substituted for 1d. by the Finance Act, 1918. This change came into force on the 1st September, 1918. See further, on Stamp Duties, page 170.

Although the general rules governing bills of exchange are applicable to cheques, there are a few particular points of difference which require special notice. (1) A bill of exchange must be accepted before the acceptor is liable upon it. A cheque is never accepted by a banker, and therefore the banker is never liable to the holder of the cheque for refusing payment of it. If there is any remedy at all it is for breach of contract between the customer and his banker (*Schroeder v. The Central Bank of London*, 1876, 34 L.T. 735). The cheque is an order to pay and not an assignment of a sum of money. (2) A bill

Bills and Cheques: Points of Difference.

must be duly presented for acceptance and payment, or the drawer will be discharged. The drawer of a cheque is not discharged by delay in presenting it for payment, unless, through the delay, the position of the drawer has been injured by the failure of the bank, when he had sufficient money deposited to meet the amount of the cheque. In such a case the holder must prove for the amount of the cheque in the winding up or the bankruptcy of the bank. The drawer is discharged to the extent of the damage owing to the delay of the payee. (3) No notice of dishonour is necessary if a cheque is not met; want of assets is a sufficient notice.

To claim the protection of resorting to the drawer in case a cheque is not met, the provisions of sect. 74 of the Act must be carefully noted. This section, in fact, somewhat relaxed the stringency of the law upon the subject. At common law the mere omission to present a cheque for payment did not discharge the drawer until six years had elapsed—the period allowed by the Statute of Limitations. But now if a payee does not present a cheque within a reasonable time, and the drawer had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage. What is a reasonable time depends upon the facts of each particular case. Generally speaking, however, a cheque is considered to have been presented within a reasonable time when it has been presented in accordance with the following rules: (*a*) If the person who receives the cheque and the banker upon whom it is drawn are in the same place, the cheque should, in the absence of special circumstances, be presented for payment on the day after it is received; (*b*) If the person who receives the cheque and the banker on whom it is drawn are in different places, the cheque must, in the absence of special circumstances, be forwarded for presentation on the day after it is received, and the agent to whom it is forwarded for presentation must present it on the day after its receipt by him; (*c*) In the computation of time non-business days are excluded. These rules apply in case the banker fails; otherwise the drawer is not discharged. An indorser will be discharged if a cheque is not presented within a reasonable time. In spite of the stringency of these rules, however, a reasonable time may still be inferred though these periods are much exceeded; and it is presumed that

Presentment for Payment.

when a cheque is crossed, any delay caused by presenting the cheque pursuant to the crossing is excused.

An illustration of the effect of what has just been stated may be given by the following example. A cheque is drawn for £50 upon a banker. The cheque is not presented within a reasonable time. Shortly afterwards the banker fails. The drawer had at the time when he drew the cheque, or when it could be presented, and for a reasonable period after, a sum of £50 or more standing to his credit in the books of the bank. The drawer is discharged by the delay in presentment to the extent of the damage he has sustained, and the holder of the cheque must prove for the £50 in the bankruptcy of the bank to the extent of such discharge. If the drawer had not sufficient funds to meet the cheque, if presented, he is not discharged This shows clearly the necessity of expedition in dealing with negotiable instruments.

Illustration.

Although a debt is not extinguished by delay in presenting a cheque, unless the claim is barred by the six years allowed by the Statute of Limitations, it is the custom of bankers not to pay cheques which are presented after a certain period has elapsed since their ostensible date of issue. With some banks the period is six months, whilst with others it is twelve months. It is not very obvious how the banks are justified in their action, and it would not be easy, owing to the difference of the time allowed, for the custom to be set up as one existing among bankers.

Stale Cheques.

It is now necessary to examine the different parts of the definition of a bill of exchange, and to point out their application to cheques.

A cheque is an unconditional order in writing. Little difficulty can arise as to the writing, and as cheque books are issued by bankers to their customers there is rarely any question as to the form of cheques. It sometimes happens that customers who have not their cheque books in their possession make use of ordinary note-paper, and write out what is intended to be a cheque. It is submitted that this practice, though quite legal, is most reprehensible. In such cases the greatest care is needed in drawing what purports to be a cheque, as it may turn out that the document is irregular or incomplete in various respects. A banker should always scrutinise such a

Unconditional Order in Writing.

cheque very closely. A difficulty may arise about the stamp. It is a common fallacy to suppose that if a cheque is issued unstamped, any holder may affix an adhesive penny stamp (now 2d.) to the document and afterwards cancel it. That is not so. By sect. 38, ss. 1, of the Stamp Act, 1891, every person who issues, negotiates, or presents for payment, or pays any cheque not being stamped, incurs a penalty of £10, and the person who takes such unstamped cheque is not entitled to recover thereupon ; but there is the proviso of ss. 2, which states that if a cheque is presented for payment unstamped, the banker may affix the adhesive stamp of one penny and cancel it, and charge the duty in account against the person by whom the cheque was drawn, or deduct the duty from the amount of the cheque. A cheque drawn on unstamped paper, to which an intermediate holder had affixed an adhesive stamp and cancelled it, was held to be invalid in *Hobbs v. Cathie*, 1890, 6 T.L.R. 292. This case was decided under the Stamp Act, 1890 ; but the provisions of that Act were similar in this respect to the Stamp Act, 1891. It may be mentioned here that cheques were formerly exempt from stamp duty, but it was necessary that they should be issued within fifteen miles of the bank upon which they were drawn. The enactments as to this exemption, however, have been long repealed, and a 1d. stamp (2d. since the 1st September, 1918) is the duty charged on every cheque. The order in writing must be unconditional. The reader is referred to the chapter on Bills of Exchange as to the meaning of " unconditional." It does not often arise in the case of cheques, but it may do so where a person or a firm has a special form of cheque printed for use in business. An illustration of a cheque of this kind was furnished in the case of *Bavins v. London & South-Western Bank*, 1900, 1 Q.B. 270. The document was as follows :—

The Great Northern Railway Company.
No. 1, *Accountant's Drawing Account.*
London, July 7, 1898.
The Union Bank of London, Limited.
No. 2, *Prince's Street, Mansion House, E.C.*

Pay to J. Bavins Junr. and Sims the sum of Sixty-nine pounds 7/-.
Provided the receipt form at the foot hereof is duly signed, stamped, and dated.

*£*69 7*s.*

Then followed the signatures of the secretary and the assistant accountant of the Great Northern Railway Company. The receipt form at the foot was as follows: "*Received from the Great Northern Railway Company the above sum as per particulars furnished. This receipt is not to be detached from the cheque. Signature* ———— *Dated* ————." It was held that a document of this kind was not a cheque, whatever might be the obligations imposed upon a banker to pay the amount named in such a document when issued by one of the banker's customers.

Drawer and Drawee.

The drawee is the banker, and is always designated in the ordinary form of cheque. If the cheque is written out on ordinary paper care must be taken not to leave him indefinite. The drawer is the person who gives the order to the banker. He may be a person or a body of persons, just as in the case of a bill of exchange. And a cheque may be drawn by a person who has no capacity to contract, as an infant, if the banker upon whom the cheque is drawn has funds in his hands to meet it, or if there is an arrangement for an overdraft. But if the banker fails to honour it, or if the cheque is stopped, the holder has no right of recourse against the drawer, for, in the case of an infant, there is no remedy at all on a cheque, even though it is given as the price of necessaries. This point has been dealt with under bills of exchange, and the same rules are entirely applicable to cheques. At the same time it may also be pointed out, as was done with respect to bills, that where the payee or any indorser of a cheque is an infant, the indorsement of the infant passes the property in the cheque so that the indorsee or the transferee may sue the drawer or the other indorsers, who have capacity to contract, although the infant can never be liable as indorser. As a married woman can now contract with respect to her separate estate as though she was a *feme sole*, she has full capacity to draw cheques. Lunatics and drunken persons are only limited in capacity to draw cheques as stated on page 22. As to corporations, it seems that the power to issue cheques is impliedly inherent in them.

Account of Minor.

It is not uncommon for a banker to have an account with a minor, and there has been considerable discussion as to the position of the former when he has allowed the latter to open a current account at his bank. It has been argued that an infant can neither draw a valid cheque nor

give an effective discharge to his banker for sums of money advanced upon cheques drawn by the infant. Without entering into details it seems that each of these arguments is incorrect, though there are no legal decisions setting out the law quite clearly. The banker must, however, be careful in his dealings with an infant. So long as there is a balance on the right side, and no difficulties have arisen owing to such irregularities as forgeries, unauthorised signatures, etc., it is hardly possible to conceive what claim an infant could set up against a banker. But if the banker allows the infant to have an overdraft, he cannot recover the amount of it from the infant. The overdraft is money lent, and the infant is protected by statute. In addition to this any security given by an infant for such overdraft is null and void. Generally, upon the question of the liability of an infant, the following recent cases may be referred to with advantage : *Levene v. Brougham*, 1909, 25 T.L.R. 265 ; *Stocks v. Wilson*, 1913, 2 K.B. 235 ; and *Leslie v. Shiell*, 1913, 29 T.L.R. 554.

Pay Money on Demand.

The order is to pay on demand, and there are no days of grace. The payment must be in money, and the sum must be certain. A cheque may be drawn for any amount, though bankers do not deal with fractions of a penny. The sum is denoted in words in the body of the cheque, and in figures in the bottom left-hand corner. If there is a discrepancy between the two, the words govern the instrument, so that if a cheque is drawn for " Twenty pounds five shillings and nine pence," and the figures are £18 4s. 7d., the former is the amount payable. It is the usual custom, however, for a banker to return a cheque which shows a discrepancy, marked " body and figures differ."

Payee.

A cheque must be an order for payment to or to the order of a specified person or to bearer. This person is called the payee. If he is specially designated, and the cheque is payable to him or to his order, the payee must indorse the cheque in order either to obtain payment from the banker upon whom it is drawn, or to negotiate it. In every other case the cheque is payable to bearer. It is well known that in the forms of cheques issued by bankers, payment is directed to be made " to order " or " to bearer." The latter never require indorsement by the holder in order to pass the property in them, nor do the former unless the payee is distinctly identified. Thus, an order cheque in which the payee is " Rent," " Goods," " Wages," or anything

similar, is a cheque payable to bearer.[1] And a similar cheque is also payable to bearer, although on an order form, if the payee is a fictitious or a non-existing person. The non-existing person it is unnecessary to consider, because he cannot indorse. The question of the fictitious person is another matter, and has caused considerable difficulty. He has been already referred to in the case of *Bank of England v. Vagliano*, 1891, App. Cas. 107, where it was pointed out that the payee may be a fictitious person within the meaning of the statute, although an existing person, if he was not intended to have any right in the bill. (*Ante*, p. 47.) As this is a decision of the House of Lords it stands as law, however unsatisfactory it may appear. And the decision has been applied to cheques. In the case of *Clutton v. Attenborough*, 1897, App. Cas. 90, it appeared that the plaintiffs had a clerk in their employment of the name of Piper. By an elaborate and long-continued system of fraud and forgery Piper caused cheques to be drawn payable to the order of one George Brett and signed by one of the members of the plaintiffs' firm as drawer. Piper then indorsed the cheques in the name of George Brett, and cashed them with the defendants, they (the defendants) acting in good faith and taking the cheques for value. The cheques were afterwards paid by the plaintiffs' bankers to the defendants' bankers, and the defendants were credited with the amounts. There was no such person in existence as George Brett. In an action brought to recover the total amount of the cheques, between £3,000 and £4,000, it was held that the defendants were not liable to refund the money to the plaintiffs. The cheques, having been drawn by the plaintiffs payable to the order of a "fictitious or non-existing person," were payable to bearer, and the defendants having taken them in good faith and for value were holders in due course, and had a perfect title to the cheques as negotiable instruments. With these two cases, however, must be compared the more recent decision of *Vinden v. Hughes*, 1905, 1 K.B. 795, in which the result arrived at appears to conflict with the previous decisions, and which cannot carry the weight of the former, as it is only a decision of a court of first instance. In *Vinden v. Hughes* the plaintiffs, market salesmen, had in their

[1] It is asserted by some authorities, however, that such a cheque should be indorsed by the drawer. A distinction is drawn by bankers between a fictitious and an impersonal payee.

employ a confidential clerk and cashier whose duty it was to fill up cheques payable to the order of various customers of the plaintiffs with the names of such customers and the amounts payable to them respectively, to obtain the signatures of the plaintiffs thereto, and then to post the cheques to the customers. Between the years 1901 and 1903 the clerk made out twenty-seven cheques to the order of various customers, amounting in all to £487, obtained the signature of the plaintiffs thereto, and misappropriated them, and, having forged the indorsements, negotiated them with the defendant, who gave full value for them in good faith, and obtained payment for them from the plaintiffs' bankers. On an action being brought to recover the amount so received from the defendant it was held that in the circumstances of the case it was impossible to come to the conclusion that the plaintiffs when drawing these cheques had used the names of their customers by way of pretence only, and consequently that the payees were not fictitious persons within the meaning of sect. 7 of the Bills of Exchange Act, that the fraudulent indorsements by the clerk were no authority to the defendant to hold the cheques, and that the plaintiffs were entitled to judgment for the amount claimed. It is to be regretted, from a legal point of view, that this case did not go further, as it is submitted that the definition of a fictitious person is left in great doubt, and apparently dependent upon circumstances, at any time a most unsatisfactory state of things, and especially so in the case of negotiable instruments. The case of *Vinden v. Hughes* should be carefully read and studied with *Macbeth v. North and South Wales Bank*, 1908, App. Cas. 137. There the cheque was obtained by a fraudulent representation made to the drawer, who had no intention of making the person designated as payee, and who was existing, other than the person to whom the cheque was to be paid. If a cheque is drawn without the name of the payee being inserted by the drawer, and the confidential clerk to whom it is handed then fills in a wrong name, a holder of the cheque who has given no value for it cannot sue upon it, and if such holder has received payment for it, the drawer can recover back the money from him (*Paine v. Bevan*, 1914, 110 L.T. 933).

In view of what has been already stated, very few words are necessary to indicate the difference between cheques which are payable to order and those which are payable to bearer, when

they get into circulation and before they are presented to the banker upon whom they are drawn for payment. Order cheques must be indorsed in the first instance by the payee; bearer cheques need no indorsement. An order cheque which is simply indorsed by the payee becomes a cheque payable to bearer. Thus, if a cheque is drawn "Pay A B," or "Pay A B or order," and A B indorses it, which he must do before he can transfer it, the cheque becomes one payable to bearer. But if A B indorses it, and above his signature writes, or authorises to be written, some such words as "Pay C D," or "Pay C D or order," the cheque remains a cheque payable to order, and C D must indorse it. And, in turn, C D, or any subsequent holder, can make the cheque payable to bearer or to order in the same way, when he indorses it. And just as an indorser facilitates the negotiation of a cheque payable to order by simply indorsing it, so the holder himself is able to restrict the negotiation of a bearer cheque by writing above the signature of the previous indorser words indicating that the cheque is to be paid to him, the holder, or his order. A cheque which is indorsed and made payable to a specified person or his order, whether by the payee or any subsequent indorser, is said to be specially indorsed, whereas when there is the mere signature of the payee or an indorser it is said to be indorsed in blank. The rules as to special indorsements and indorsements in blank are the same for cheques as for bills. (See p. 51.) If a cheque is made payable to A B only, or to A B, and declared not to be transferable, no other person than A B can claim the amount of it, and he should be in a position to establish his identity when he indorses it and presents it for payment. All the rules previously stated as to bills which are made payable to one or more persons jointly, or to one or some of several, or to the holder of a particular office, are equally applicable in the case of cheques, and the requirements as to indorsement, etc., by them are the same as those already set out.

Special and Blank Indorsements.

A cheque must be presented for payment before the drawer can be sued upon it. The form of the cheque being generally settled by the banker himself, little difficulty will be likely to occur in that respect. But the amount of the cheque will not be paid over the counter of the bank if the cheque is crossed (*infra*), nor will payment be made if the date has not

Presentment.

arrived. But if the cheque is signed by the drawer, if it is not crossed, if the date is already past or is the day of presentment, if the cheque is payable to order and is indorsed with the name of the payee, and if the banker has a balance in hand to the credit of the drawer sufficient to meet the whole amount of the cheque, the person who presents the cheque is entitled to receive payment of the same, and the banker who neglects to honour the drafts of his customer is liable to an action for damages at the suit of his customer (*Marzetti v. Williams*, 1830, 1 B. & Ad. 415). But a banker is not liable if his customer pays in an amount to meet the cheque so short a time before its presentment that he is unaware of its receipt. The banker is also liable to the customer if he has allowed him an overdraft to such an extent that there is still a sufficient sum left to meet the cheque when it is presented. But, as has been stated above, there is no liability resting upon the banker so far as the person who presents the cheque for payment is concerned. The remedy of the holder of the cheque is against the drawer and any indorsers, if the cheque has been indorsed.

No Part Payment.

A banker does not pay a part of a cheque, and if a customer draws a cheque for an amount in excess of the balance which he possesses, or of the overdraft which has been agreed upon, the banker may refuse payment. Thus, if the balance of a customer is £49 and a cheque is drawn by him for £50, payment could be refused. But, of course, a banker would use his discretion in paying or dishonouring such a cheque. He would not be likely to upset a good customer by so drastic a proceeding. Part of the amount of a cheque is clearly not sufficient to meet it (*Carew v. Duckworth*, 1869, L.R., 4 Ex. 313). It is sometimes supposed that the payee or holder of a cheque has a right in such a case to pay in the difference between the amount of the cheque and the balance standing to the drawer's credit at the bank, so as to secure the sum that is there. Thus, in the example just given the holder would receive the £49 in the bank if he first paid in £1, so as to make the balance to the credit of the customer equal to £50. That such a thing is done occasionally in practice is well known, yet it cannot but be regarded as illegitimate and improper. The two persons who know the true state of the account at the bank are the banker and the customer. It is not easy to understand why a customer should draw a cheque for

an amount which he knows will not be met and tell the payee of the cheque of the fact, and it is difficult to believe that a banker can often be guilty of a breach of his obligation not to disclose his customer's account. The extent of this last-named obligation of a banker in this respect is doubtful, and it is not certain that the banker is liable unless special damage is proved (*Hardy v. Veasey*, 1868, L.R., 3 Ex. 107).

Date of Cheque.

The date forms no part of the definition of a bill of exchange, and therefore the same applies to a cheque. If a cheque is issued undated the holder may fill in the date. And a cheque is not invalid because it is ante-dated, post-dated, or dated on a Sunday. But it is probable that the drawer of a post-dated cheque may render himself liable to penalties under the Stamp Act, 1891, if he issues such a cheque and it is allowed to get into circulation or to be negotiated. No liability, however, is incurred if a post-dated cheque is drawn and then held by the payee until the date of payment arrives. For a collateral purpose a post-dated cheque was allowed to be put in evidence in the case of *Royal Bank of Scotland v. Tottenham*, 1894, 2 Q.B. 715.

Signature of Customer.

A banker is bound to know the signature of his customer. For this purpose he is entitled to apply repeated tests, if he cares to do so. The handwriting of men and women varies from time to time, and a banker is only acting with common prudence if he takes adequate measures to protect himself against loss. If a banker pays a cheque which bears a signature as drawer purporting to be that of his customer, and the signature turns out to be a forgery, the banker is the person who loses the money. He cannot debit his customer with the amount paid. And this is so, even though the customer has been careless in the handling of his cheque book, and has left it about in such places so as to render it easy for a thief to abstract one or more cheque forms from the book. The reason for this rule is obvious. If a customer was to be held liable to be debited for money paid under a forged order, his balance would decline in an extraordinary fashion—in fact, any person who knew that he had a banking account could forge his signature and obtain his money. It is the banker's business to prevent this, and his skill and experience enable him to accept the risks of the position. In the case of the *Lewes Steam Laundry*

Co. v. Barclay & Co., 1906, 95 L. T., 444, an unsuccessful attempt was made to exonerate a banker from liability who had paid cheques bearing the forged signatures of the drawers, on the ground that the directors had been guilty of negligence in appointing a certain person as secretary of the company, such person being the forger, considering that he had been known, to the chairman of the directors, to be guilty of forgery on a previous occasion. See *North and South Wales Bank v. Macbeth*, 1908, App. Cas. 137.

Forged Indorsements.

So much misapprehension exists as to the position of parties where a cheque bears a forged indorsement that it is necessary to examine such a case somewhat minutely, and compare the rights and liabilities of bankers and other persons. In the case of bearer cheques, where no indorsement is necessary, a banker is in the same position as any other person, as, for instance, a tradesman who cashes a cheque to oblige a customer. Each takes the cheque for what it is worth, and runs the risk of loss through a forged signature of the drawer and insufficiency of assets. Of course, in the case of a banker, where a cheque is drawn by a customer on his own bank, it is the banker's business to know the signature of his customer and whether there are any assets to meet the amount of the cheque. If the cheque is drawn on another bank and the banker cashes it for a customer, he is acquainted with the state of his own customer's account and knows that if the cheque is dishonoured he can recover the amount of the same by debiting his customer's account. If he cashes a cheque drawn upon a bank other than his own for a person who is not a customer, he runs the risk of the drawer's signature and want of assets. In the case of an order cheque, a tradesman who cashes a cheque bearing a forged indorsement loses his money, whereas a banker who pays such a cheque drawn upon himself is under statutory protection. But a banker who becomes a holder in due course of a cheque bearing a forged indorsement and which is drawn upon a bank other than his own is in the same position as a tradesman. This is the combined effect of sects. 24 and 60 of the Act. The former has been referred to fully in a previous chapter (see p. 89). The latter is as follows: "When a bill payable to order on demand is drawn on a banker"—and this is a cheque—" and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to

show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority." But although the section gives great protection to the banker, much care must be exercised in order that its benefit may be claimed. For example, if the cheque is drawn to the order of a particular person, and the indorsement is a name differing in any respect from that of the payee, the banker would be guilty of negligence in paying such a cheque, and could not debit his customer with the amount paid. Also, presumably, if a banker paid the cheque after banking hours, or if he paid it across the counter in contravention of a crossing of the cheque, he would not be acting in the ordinary course of business, and again he would not be entitled to debit his customer with the amount paid by him. But if a cheque is in all respects quite regular upon its face, and when presented across the counter bears an indorsement which is the same name as that of the payee, there is no liability resting upon the banker for paying the amount of the cheque if it turns out that the indorsement has been forged. The customer is debited with the amount, provided, of course, that his signature as drawer is genuine and that payment of the cheque has not been stopped.

An example or two will make this point as to forged signatures and indorsements quite clear. A cheque is made payable to C D, or bearer, and is purported to be drawn by A B. It is cashed by a tradesman, for the convenience of a customer, in payment of a debt, or for the amount represented by the cheque. The only risk that the tradesman runs is in respect of the signature of the drawer, A B, and, of course, lack of assets. He presents the cheque at the bank upon which it is drawn and asks for payment. The banker discovers that the signature of A B is forged, and refuses payment. He will also refuse payment, and probably, if there is an insufficiency of assets altogether apart from the matter of forgery, the tradesman loses his money. He may have his remedy against the customer—if he can find him—but that is a matter which is outside the present illustration. But if the banker fails to discover the forgery and pays the amount, the banker is primarily liable. He cannot charge his customer,

Illustration.

and he is left to seek his remedy against the tradesman, if he can discover him. Let it now be presumed that the signature of the drawer is genuine and the cheque payable to bearer. The tradesman who takes the cheque in due course has a perfect title to the same, and the banker upon whom it is drawn is exonerated from all liability by paying the cheque across the counter, even though payment is made to a thief. Now let the position as to an order cheque be considered. Suppose the cheque is drawn by A B and made payable to C D or order. It is quite clear from what has been stated that C D must indorse the cheque. The cheque is stolen, and a person goes to a tradesman with it (it is immaterial whether the cheque is crossed or not), and gets him to cash it. The cheque is indorsed with a signature which purports to be that of C D. If the signature of C D turns out to be a forgery, the rightful owner of the cheque, on discovering the facts, can sue the tradesman, either for the return of the cheque, or for the amount which he has received for it, and the tradesman is left to his remedy against the person from whom he took it. But if such a cheque is taken to the banker upon whom it is drawn, even by the thief, and a signature purporting to be that of C D is indorsed thereon—but the cheque must not be crossed—the banker may pay the amount of the cheque across the counter, and he is in no wise liable to the true owner for the amount of the same. The Act entirely exonerates him from liability, and he is perfectly entitled to debit his customer with the amount of the cheque. It is not pertinent to the present inquiry to consider where the loss must ultimately fall. It may be upon the drawer or the payee according to circumstances. This exemption of a banker from liability only refers to the banker upon whom the cheque is drawn. Thus, if the cheque drawn in favour of C D is upon the X bank, and the thief or wrongful possessor forges the signature of C D and pays the cheque into his own account with the Y bank, and the Y bank gets the cheque cashed and allows the thief to withdraw the money, the rightful owner can maintain an action either against the thief or against the Y bank for the amount. The X bank is exonerated by sect. 60.

A banker should refuse payment of a cheque which appears to have been materially altered, otherwise he may have to bear any loss which arises. A banker is liable in case of fraudulent

alteration, even though the alteration is not apparent, and could not have been discovered by anybody. Again, a banker should not pay the amount of a cheque which has been torn or mutilated. Until quite recent years, it had been held, as an exception in favour of the banker, that if his customer had drawn a cheque so negligently as to facilitate an alteration or a forgery, the customer could not hold the banker responsible for any loss arising. Negligence is, of course, a question of fact. Thus, if a customer drew a cheque so carelessly and left blank spaces which might make it possible for an alteration or forgery to be committed, and the amount for which the cheque was drawn was increased, the customer had to bear the loss if the banker paid the increased amount. The customer suffered on account of his own negligence, the banker not having been guilty of any. This was the decision in *Young v. Grote*, 1827, 4 Bing. 253, the facts of which were briefly as follows: Mr. Young delivered to his wife certain printed cheques signed by himself, but with blanks left for the amounts for which they were to be drawn, requesting his wife to fill up the blanks according to the exigencies of his business. She caused one to be filled up with the words "fifty pounds two shillings," the "fifty" being commenced with a small letter, and placed in the middle of a line. The figures 50 2s. were also placed at a considerable distance from the printed £. In this state Mrs. Young delivered the cheque to her husband's clerk to obtain payment from the bank, whereupon he inserted at the beginning of the line in which the word "fifty" was written the words "three hundred and," and the figure 3 between the £ and the 50. The banker paid the cheque as for £350 2s. in the ordinary course of business, and it was held that he was entitled to debit Mr. Young with the amount. The case would have been entirely different if the cheque had been drawn in the ordinary way and then altered. It is the duty of the banker to take care that he is not imposed upon by alterations in the amount of a cheque after it has left the possession of the drawer, when the drawer has not been guilty of any negligence. With this case of *Young v. Grote* the decision of the Privy Council in *Colonial Bank of Australasia v. Marshall*, 1906, App. Cas. 559, should be compared. There the circumstances were similar to those of *Scholfield v. Earl of Londesborough* (*ante*, p. 97), except that the instrument altered was

Alteration.

a cheque and not a bill. It was held that the mere fact of a customer of a bank drawing a cheque and leaving spaces which a forger can utilise for the purpose of forgery is not of itself sufficient evidence of negligence on the part of the customer to exonerate a banker from all liability. But any doubt that may have been entertained upon the point has been set at rest, as far as the United Kingdom is concerned, by the decision of the House of Lords in the case of *London Joint Stock Bank v. Macmillan*, 1918, App. Cas. 777. This case is so important, that the facts are here fully set out. The respondent kept a banking account with the appellant bank, and a confidential clerk was entrusted with the task of filling up cheques. On the 9th February, 1915, as the respondent was leaving the office, the clerk told him that he wanted £2 for petty cash and produced a cheque for signature. The cheque contained no words in the space left for words, and the figures "£2 : 0 : 0" were in the space left for figures. The cheque was properly dated and made payable to "ourselves" or bearer. The respondent signed the cheque in this condition, and the clerk added the words "One hundred and twenty pounds" and the figures 1 and 0 on each side of the figure 2. The addition of these figures was made possible by the position of the figure 2 on the cheque. The cheque, thus transformed into a complete cheque for £120, was presented at the bank, and payment was made in the ordinary course of business. The bank debited the customer with the amount, but the customer claimed £118 as money paid by the bank without his authority and under a forged cheque. The court of first instance and the Court of Appeal felt that they were bound by authority, and decided in favour of the customer ; but the position was reversed when the case was heard by the House of Lords. It was held that a cheque drawn by a customer is, in point of fact, a mandate to the banker to pay the amount according to the tenor of the cheque, but a customer is bound to exercise reasonable care to prevent the banker being misled. If he draws a cheque in a manner which facilitates fraud he is guilty of a breach of duty as between himself and the banker, and is responsible for any loss suffered by the banker as a natural and direct consequence of this breach of duty. In this particular case, the respondent by his neglect to take precautions against forgery had put it in the power of his clerk to increase the amount of the cheque, and consequently

he must bear the loss sustained as between himself and the bank. It was no answer for the customer to say that he had the utmost confidence in his clerk. The customer's duty was not to have a clerk whom he believed to be honest, but a specific duty as to the preparation of the order upon the banker. It was further held that, on the principle that if a customer signs a cheque in blank and leaves it to another person to fill up, the customer is bound as to the amount by the general loss of agency. In this case, the cheque was for all practical purposes a cheque in blank.

Blank Cheque.

When a cheque is signed by the drawer and nothing is entered thereon as to the amount, whether a payee is or is not named, the cheque is called a blank cheque. "Whoever signs a cheque or accepts a bill in blank, and then puts it into circulation, must necessarily intend that either the person to whom he gives it, or some future holder, shall fill up the blank which he has left." (*Per* Lord Watson, *Scholfield v. Earl of Londesborough* (*ante*, p. 97.) The drawer is therefore liable, as between himself and the banker on whom he has drawn the cheque, to be debited with whatever amount the cheque is filled in for. The person who fills in the cheque is practically the agent of the drawer. In order to limit the authority in the case of a blank cheque, or to prevent extensive alterations to any considerable extent in other kinds of cheques, it is not uncommon to find some such words—often by means of perforation—as "Under £20," or "Under £5," written across the cheque.

Liabilities of Parties.

As in the case of bills, every person whose authorised signature appears upon a cheque is liable on the instrument. The liability of the banker is to his customer alone; that of every other person is to the holder, and consideration is always presumed until it is rebutted. From the nature of things a cheque rarely passes through several hands in the same manner as a bill. The payee generally pays the cheque into his banking account, if he has one, or cashes the cheque at the bank upon which it is drawn at the earliest opportunity. But if the payee has no banking account, and the cheque is crossed, so that he cannot receive payment by presenting it at the bank, he gets some friend to accommodate him with cash and transfers the cheque, either by indorsement if the cheque is drawn to order, or by mere transfer if it is payable to bearer. As in the case of a bill the transferee may

require the transferor to indorse even a bearer cheque, so as to secure him as a party to the cheque in case it is not paid by the banker. Where the holder of the cheque has taken it complete and regular on its face, in good faith and for value, and without any notice of any defect in the title of his transferor, he is a holder in due course, and if the banker dishonours the cheque he can sue the drawer or any indorser for the amount of the same. If the person who is in possession of the cheque is a holder simply, and has not become a holder for value, he is liable to be met, in any action, with any of the defences which would have been open against his transferor. If the holder of the cheque is the payee, he may sue the drawer upon the cheque or upon the consideration for the same. In no case, however, can a holder sue upon a cheque until it has been presented at the bank for payment.

Parties.

Less difficulty occurs as to parties in the case of cheques than in the case of bills, because no one can lawfully draw a cheque unless he has an account with a banker. But it is necessary to notice the particular position of partners in a business firm. The banker should receive specific instructions as to how cheques are to be drawn, and by which member or members of the firm they are to be signed. And so long as his authority remains unchanged the banker must honour the cheques duly presented. If the account is in the name of more than one person, the order of any one of them as to the same is binding upon the banker, such as a countermand of payment. The position of all other persons, as payees or indorsers, is the same as in the case of bills, and any intention to qualify an indorsement so as to limit the liability of the indorser, or an indorsement made in a capacity other than that of principal, must be clearly indicated on the cheque itself.

Minor Points.

It will be remembered that a debt of any amount is liquidated by a cheque of the debtor for a smaller amount—there is accord and satisfaction (*Goddard v. O'Brien*, 1882, 9 Q.B.D. 37). But a cheque which is afterwards stopped is wholly inoperative (*Cohen v. Hale*, 1878, 3 Q.B.D. 371). A cheque of a person other than the debtor will also act as an accord and satisfaction, and if it is taken by the creditor in full and complete discharge of the liability of the debtor, the debt is not revived in case the cheque is dishonoured, and the debtor is free from all liability, unless he has indorsed the cheque. It is, however, always

a question of fact whether there has been complete accord and satisfaction. The mere taking of a cheque in payment of an antecedent debt, whether the cheque is that of the debtor or of any other person, will not exonerate the debtor from liability upon the consideration if the cheque is dishonoured. This has already been discussed when reference was made to the case of *Day v. McLea*, 1889, 22 Q. B. D., 610 (*ante*, p. 107).

Revocation of Banker's Authority.

The duty and authority of a banker to pay a cheque drawn upon him by a customer are determined by (*a*) countermand of payment; (*b*) notice of the customer's death; (*c*) notice of an act of bankruptcy. These are the combined effect of sect. 75 of the Bills of Exchange Act, 1882, and sect. 46 of the Bankruptcy Act, 1914. There is a difference of opinion, however, as to the precise effect of this last-named section, that is, whether it covers cheques payable to third parties, or whether it applies only to cheques made payable to the person who has committed an act of bankruptcy. When payment is countermanded, a cheque is said to be "stopped," and a banker is responsible if he pays such a cheque. As to what constitutes countermand of payment, see *Curtice v. London City and Midland Bank*, 1908, 1 K.B. 293. The stopping does not affect the rights of a holder. It is true he cannot obtain any remedy against the bank, but he is able to sue the drawer or any indorser, or any other person, whether a party or not, from whom he received the cheque and to whom he gave consideration, though a person who is not a party to the cheque can only be sued on the consideration and not on the cheque. But he must be a holder for value, that is, value must have been given for the cheque at some time, and even then he cannot sue that party from whom he received the cheque as a gift. If he is a holder in due course his remedy is unimpeachable; all parties are liable upon it. The banker must have distinct notice of the death of his customer or of an act of bankruptcy on his part before he can refuse to honour cheques drawn by him, provided he has funds in his hands, but, as to notice of death, when the account is that of a firm which consists of several members, the death of one or more of the partners does not revoke the authority of the surviving partners or partner to draw cheques on the firm account (*Backhouse v. Charlton*, 1878, 8 Ch. D. 444). Moreover, the service of a

garnishee order *nisi* on a banker, that is, a legal notice warning the banker not to part with the moneys of his customer, based upon a judgment against the customer, ties up the whole of the current account of the customer at the date of the service of the order. It is immaterial that the balance of the customer is greatly in excess of the amount of the judgment debt. The account cannot be operated upon even by cheques which have been issued before the service of the order (*Rogers v. Whiteley*, 1892, App. Cas. 118; *Yates v. Terry*, 1901, 1 Q.B. 102).

Stopping Payment.

When a customer desires to stop the payment of a cheque which he has drawn, he must give notice in writing to his banker, describing fully the cheque, the payee, etc. Upon presentation to the banker upon whom it is drawn the words "Payment Stopped" are written in the top left-hand corner. A collecting banker receiving back such a cheque will debit his customer with the amount, if he has already credited him with the sum, and return the cheque to his customer. The drawer of a cheque is the only person who can "stop payment" of it, but bankers often receive notice from the holder of a cheque that it has been lost or stolen. When notice is received from a holder, he should be requested to obtain at once written instructions from the drawer. If the cheque is presented before a communication is received from the drawer, the banker will postpone payment until he has heard from the drawer or has been otherwise satisfied. If a cheque is dishonoured through lack of funds to meet it, the letters "N/S," that is, "not sufficient," or "R/D," that is, "refer to drawer," are written upon it. These letters should never be used if there is merely some irregularity in the cheque itself.

Donatio Mortis Causâ.

A cheque given as a present, that is, without consideration, should be cashed at once in order that the donee may receive the benefit of the gift. Sometimes a cheque is given as a present by the drawer shortly before his death —a *donatio mortis causâ*—on condition that it is to be returned if the drawer recovers from his present illness. Unless it is cashed by the payee before the banker is notified of the death of the drawer the payee gets nothing. The banker's authority is at an end, and the executors cannot be sued, as there is no consideration for the cheque. If, on the other hand, a cheque is given by

a drawer for value, the holder can maintain a claim against the deceased's estate as for any other debt.

Payment of an account may be made by cheque as well as by bill. In the latter case the period of credit is extended until the date of its maturity. In the former the debt revives immediately after the dishonour of the cheque on presentation. A cheque is a legal tender unless it is objected to on the ground of its being a cheque. Thus, A owes B £100. A tenders a cheque for that sum. B says, "I will not take your cheque; I must have cash." There has been no legal tender. But if the refusal to accept the cheque is simply on the ground that the amount is insufficient, there has been a good tender. When payment is made by cheque, it should be drawn to the creditor's order. The creditor is then compelled to indorse it, otherwise the cheque will not be met, and the production of the cheque itself will be *primâ facie* evidence that the debt has been paid. Of course, it will be a different matter if the signature of the creditor has been forged, and payment made to some other person. This is a question of fact.

Payment by Cheque.

Unless expressly or impliedly authorised to use the post, the drawer of a cheque is responsible for any loss which may arise through the miscarriage of a cheque sent by post. He has himself chosen the post as his agent, and he must bear the consequences. A request, however, on the part of the payee that a cheque should be forwarded in this manner will exonerate the sender completely, since the post is now the agent of the payee. This matter is always a question of fact, and must be decided upon the special circumstances of the case. See *Pennington v. Crossley*, 1897, 77 L.T. 43; and generally, upon the question of the authority to send negotiable instruments or money through the post, see *Mitchell-Henry v. Norwich Union Life Insurance Society, Ltd.*, 1918, 1 K.B. 123. Open cheques ought not to be sent by post.

Cheques Sent by Post.

Upon payment the banker generally cancels the signature of the drawer, and the cheque is then discharged. The paid cheque is the property of the drawer, but the paying banker is entitled to keep it as a voucher until his account with his customer is settled. There is a slight variation in practice between the methods of London and country

Property in Paid Cheques.

bankers as to paid cheques. If a banker retains the paid cheques he may be compelled to produce them in court in an action in which the cheques become necessary evidence, if they are actually in his possession. From a legal point of view, cheques which are in the hands of a banker are considered to be in the possession of the customer—the banker is the customer's agent (*Partridge v. Coates*, 1824, R. & M. 153).

It is impossible to enter into the relationship existing between a banker and his customer in detail, but there are one or two points in connection with cheques which cannot be omitted.

Banker and Customer.

The relationship is that of debtor and creditor, and to this is added the obligation of the banker to repay the debt to the customer in such parts as it is called for by the customer (*Foley v. Hill*, 1848, 2 H.L.C. 28). Also if money is paid to a banker under a mistake of fact, the same can be re-demanded from the banker by the person who paid it (*Kerrison v. Glyn, Mills, Currie & Co.*, 1912, 105 L.T. 721). The banker is in no respect a trustee for the customer as to the money paid into the bank, otherwise he would be responsible to the customer and would have to account for all profits made by him in the use of the money deposited. The Statute of Limitations applies to the debt between a banker and his customer as well as to other debts. If, therefore, money is deposited in a bank for six years and not operated upon in any way, *e.g.*, by payment of the principal, by drawing cheques, or by the allowance of interest by the banker, the money becomes the absolute property of the banker at the end of the six years (*Pott v. Clegg*, 1849, 16 M. & W. 321). It is the practice of bankers, however, when funds are lying at their banks which are legally their own money not to inquire for claimants to the same, but at the same time not to insist on their legal rights under the Statute of Limitations against claimants who make good their claims. It is also to be observed that the ledger of the bank is the record of the customer's transactions with the bank, and the pass book purports to be nothing more than a copy of the ledger. It is the duty of the customer as well as of the banker to see that the entries are correct, and, if incorrect, to see that they are put right at once. If a customer, however, relies upon the credit entries in his pass book and thereupon alters his position, the banker must bear the loss which arises through his own errors (*Skyring v. Greenwood*, 1825,

4 B. & C. 281). Lastly, if a banker in error honours a cheque of a customer who has no assets to meet it, the loss in the first instance falls on the banker himself. The payment is irrevocable as far as the payee is concerned. It is a general rule of law that money paid under a mistake of fact can be recovered. But the mistake must be between the two parties to the contract, that is, in the case of cheques, the payer and the payee. In the example given, the mistake is one between the banker and his customer, the former supposing that the latter had funds to meet the cheque. There is no mistake between the banker and the payee. As soon, therefore, as the latter receives the money over the counter, he is entitled to retain it, and the banker must seek a remedy against his customer (*Chambers v. Miller*, 1862, 32 L.J., C.P. 30).

CHAPTER II

CROSSED CHEQUES

THE cheques dealt with in the last chapter have been those which can be presented to the banker upon whom they are drawn, and paid over the counter of the bank; although, in order to illustrate some of the points connected with them, examples have been given in which the cheques were in reality crossed, those cases, for instance, referring to fictitious payees. Such cheques are known as "open" cheques, and it is obvious that great risks are always run when they are in circulation. A drawer loses an open cheque. If the cheque is a bearer cheque, or if, being an order cheque, it has been indorsed with the payee's name, any finder of it can go at once to the bank on which the cheque is drawn and cash it, unless it has been stopped, or he may transfer it to a holder in due course. The holder is entitled to the money represented by the cheque, and if he cannot obtain it from the bank by reason of its being stopped, he may sue the drawer upon it. And the drawer has no defence unless he can show that the holder is not a holder in due course. Again, the cheque may be lost or stolen in the post. As to who is the loser as between the sender and the addressee, depends upon whether the post is the agent of the sender or of the person to whom the cheque is sent. But any person who becomes a holder in due course has a title against the world, unless the cheque is payable to order and the thief forges the indorsement of the payee. The holder has then no title since he has taken under and through a forged indorsement. He may, however, get the money from the bank, if the cheque is open, and the banker is never liable for paying because of the forged indorsement, unless he has been ordered to stop payment. The true owner must then seek out the holder, and sue him for the return of the amount of the cheque. It is obvious, however, that great difficulties would arise before restitution could be brought about.

Open Cheque.

It was to avoid as far as possible the losses incurred by cheques getting into the hands of wrong parties that the custom of crossing was introduced. The remedy is not infallible, as will be seen

directly; but the fact of a cheque being paid through a banker instead of over the bank counter makes it less easy for frauds to be committed, and more easy for them to be detected when they have been completed. As Lord Cairns said in the case of *Smith v. The Union Bank*, 1875, 1 Q.B.D. 31, the crossing operated as a caution to the banker. The mere crossing of a cheque in no wise affects the negotiability of the instrument; it simply affects the mode of payment. The holder in due course has a perfect title to it. Two statutes passed upon the subject have been repealed by certain sections of the Bills of Exchange Act, 1882, and the law as to crossed cheques is contained in sects. 76 to 82 of the Act.

Crossed Cheques.

A cheque is crossed generally when it bears across the face of it an addition of (*a*) the words "and Company," or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable," or (*b*) two parallel transverse lines simply, either with or without the words "not negotiable." A special crossing is constituted when an addition of the name of a banker is written on the face of the cheque. The cheque is then crossed specially to that banker (sect. 76). It should be remembered that the provisions of the Act as to crossed cheques apply to dividend warrants, and also to "any document issued by a customer of any banker, and intended to enable any person to obtain payment from such banker of the sum mentioned in such document." It is well known that Post Office Orders and Postal Orders are frequently crossed, and that then payment of them cannot be obtained except through a banker.

Crossing Defined.

In practice, unless he is particularly requested not to do so, as when cash is required at once from the bank, the drawer crosses the cheque before issuing it, and he may cross it generally or specially. If he omits to do so the holder may cross it, either generally or specially, and if the drawer crosses it generally the holder may cross it specially. Either drawer or holder may also add the words "not negotiable." Again, when a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection, and where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself (sect. 77).

Who can Cross.

The crossing authorised by the Act is a material part of the cheque; and it is unlawful for any person to obliterate or to add to or alter the crossing, except as above stated (sect. 78). It will be remembered that by sect. 64 of the Act a material alteration without the assent of all parties avoids the cheque except as against the party who has himself made, authorised, or assented to the alteration, and all subsequent parties. But if the alteration is not apparent, and the cheque gets into the hands of a holder in due course, such holder is in no way prejudiced by such alteration. If the alteration or the obliteration of the crossing is done for a fraudulent purpose, it constitutes a forgery. Many firms have their cheques crossed by means of printing, and issue no open cheques at all. A payee may, however, make a special request, for his own convenience, that the cheque shall not be crossed, and the drawer sometimes accedes to the request by striking out the crossing, adding the words "pay cash" together with his signature or his initials. This is an irregular method of procedure, but it does not appear to have been judicially questioned.

Form of Crossing.

Two transverse lines are sufficient to constitute a crossing. But the common practice is to cross a cheque generally by drawing the two transverse lines and writing the words "and Co.," or "& Co." between them. If the crossing is a special one, the lines are drawn as before, and the name of the bank written between, thus, "X & Y Bank," or the name of the bank simply without the parallel lines.

On page 148 are given the common forms of crossing. The words "not negotiable" and "account of payee" will be explained later.

Duty of Banker.

The duty of a banker as to crossed cheques, omitting for the moment all reference to those which are marked "not negotiable," is set forth in sects. 79 and 80 of the Act as follows: "(1) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof. (2) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner

DIAGRAMS OF CHEQUE CROSSINGS.

General Crossings.

1

2

Not Negotiable.

3

& Co.

4

Not Negotiable.

& Co.

5

Not Negotiable.

Under Five Pounds.

6

Not Negotiable.

Under Ten Pounds.

Special Crossings.

7

Farmer's Bank.

8

Not Negotiable.

United Bank of London.

9

Not Negotiable.

Universal Bank, for Account of Payee.

of the cheque for any loss he may sustain owing to the cheque having been so paid. Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be." Sect. 80 is as follows: "Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof." The banker has the same protection as before in cases of forged indorsements, though he must take the risk of his customer's signature being correct. But if he deals with the cheque in any other manner than that authorised by the Act, his protection is gone, and any loss which ensues must fall upon him.

It is impossible to make the provisions of these sections clearer by any other means than illustrations. A draws a cheque upon the X Bank, B is the payee of the cheque. It is crossed generally. B receives the cheque and indorses it. It cannot be paid over the counter; it must go through a banker. B pays the cheque into his own banking account at the Y Bank. The amount of the cheque is credited to the account of B at the Y Bank, and the cheque is collected from the X Bank, where A's account is debited. This is the most general and ordinary way in which the transaction is carried out. Either A or B may cross the cheque specially to the Y Bank, and the same result will happen. Now, it is necessary to see what is the position of the various parties when any irregularity arises. First as to the drawer. Unless A himself, or his duly authorised agent, draws

Illustrations.

the cheque, he cannot be debited with the amount of it by his own banker, if such a cheque happens to get paid, nor can any holder of the cheque have any right to retain it or claim upon it. But if the cheque is correctly drawn, and is given in payment of a debt, A is released as soon as the cheque gets into the real or constructive possession of B, the payee. If it is handed to B, or to B's agent for B, there can be no doubt as to the transfer. If, however, it is handed to A's agent, there is no transfer until the agent has completed his work and given the cheque to B. Suppose now, that in the course of transfer the cheque is lost or stolen. If it is payable to B or order, the indorsement of B must be placed upon it ; and if the indorsement purports to be that of B and is not B's, it is a forgery. How, then, does the thief or the finder stand? He cannot give any title to the cheque, since there can be none through a forgery. If, through the ignorance of the fact of the theft or loss, the cheque is not stopped and the thief or finder has a banking account, the cheque may be paid through that account and the money eventually withdrawn. But the true owner of the cheque can on discovery recover the amount from the fraudulent payee—if he can find him. Against the X Bank, however, he has no remedy. The bank has paid under a forged indorsement, it is true, but so long as the payment has been made without negligence and in good faith, and to the specially named banker, if the cheque was specially crossed, there is no liability resting upon him (sect. 60). If there is no recovery of the money possible from the person who has obtained payment, it is the drawer or the payee who must bear the loss—the drawer if the cheque has not been transferred, the payee if it has come into his possession. It is much more likely, however, that a thief or a finder of a cheque will endeavour to negotiate it by some other means than through a bank, the chances of discovery being rather too formidable. His efforts will be directed towards getting a tradesman or other person to cash it for him. If the cheque is diverted, by theft or loss, before it gets into the hands of the true payee B, whether it is constructively in B's possession or not so as to exonerate A, the forged indorsement is still a necessity, and therefore no person can acquire a title through it. The tradesman may take the cheque in good faith, and give full value for it, and afterwards pay it into his bank. But he will be the loser. The true owner, A or B, can claim restitution from

him. The tradesman never had any legal right to the cheque or its proceeds. The bank is exonerated, the tradesman not. The latter must derive what consolation he can from his knowledge that he has a remedy over against the person from whom he took the cheque —criminal or otherwise—if he can manage to find him. But if the cheque had been lost after it had come into the possession of the payee B, and after B had placed a genuine indorsement upon it, the whole position is changed, and it is B who is the loser in every sense. The cheque is a negotiable instrument, complete in form, and although a thief might find the consequences serious for himself in the long run, he can give a good title to it. Neither the tradesman who cashes nor the banker who pays can be held liable for anything. The former has become a holder in due course, the latter has always his statutory exoneration, though he must be able to show, if necessary, that there has been no negligence on his part, that he has acted in good faith, and that the payment of the cheque has been made strictly in accordance with the crossing, that is, to some banker if the cheque is crossed generally, to the banker named if the cheque is crossed specially, or to the banker who is the agent for collection if the names of more bankers than one appear on the cheque. It is not difficult to see what is the result as far as all parties are concerned when a cheque, instead of being paid into a bank at once, is negotiated to a third person by the payee. If it is in order in all respects, and if there has been no forgery of any indorsement, both the holder in due course and the banker are in the same position as before. Of course if the cheque is payable to bearer or has been generally indorsed there is nothing to be feared at all. Enough has been said to show that the crossing of a cheque does not give absolute security, but the fact of being able to trace the persons through whose hands it has passed before being paid by the banker upon whom it is drawn goes a long way towards helping the true owner to obtain restitution under certain circumstances. The various supposititious cases of the present paragraph might have been illustrated from the Law Reports. All the points are brought out fully in *Ogden v. Benas*, 1874, L.R. 9 C.P. 513, *Smith v. Union Bank*, 1875, 1 Q.B.D. 31, and *Bobbett v. Pinkett*, 1876, 1 Ex. D. 368, to which reference should be made. It will be noticed that these decisions were before the Act of 1882, but they are still good under the new statute.

So far, the position of the paying banker has been considered the banker upon whom the cheque is drawn, and it has been seen that excepting the risk as to the forgery of the drawer's signature he is practically freed from all chance of liability so long as he acts with proper prudence and in good faith. It is now necessary to notice the position of the banker who receives the proceeds of the cheque—the collecting banker. In order that anything can be done with a cheque, the banker must in some way or other deal with it. By the common law when one person deals with the goods of another without authority he is liable to an action for conversion. The same is the common law rule in the case of a cheque. If, therefore, A deals in any way with a cheque which is the property of B, and has no authority so to deal with it, as, for example, if he is not a holder in due course, B has a right of action against A, and A will be condemned in damages. But for sect. 82 of the Act the position of the banker would not be different from that of any other person. In the interests of commerce and banking, however, it has been provided that "Where a banker, in good faith and without negligence, receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received payment."

Collecting Banker.

This protection is very great, but it must be noticed how carefully it has to be construed, so as to prevent any abuse. Good faith and absence of negligence are insisted upon. Also, the protection only applies to crossed cheques, and it appears that the crossing must be made before the cheque gets into the hands of the collecting banker. And then the collection must be made on behalf of a customer. The definition of a customer has led to litigation, the two leading cases upon the matter being *Lacave v. Crédit Lyonnais*, 1897, 1 Q.B. 148, and *Great Western Railway Co. v. London & County Banking Co.*, 1901, App. Cas. 414, in the latter of which the House of Lords came to the decision that in order to make a person a customer of a bank within the meaning of the protecting section, there must be some sort of account, either a current or a deposit account, in existence, or some similar relationship must exist between the banker and the person for whom he collects the cheque. The mere fact that for

Who is a Customer?

many years a banker has collected and paid the proceeds of cheques to a particular individual, in order to oblige him, without any difficulty arising, will not protect the banker when a crossed cheque comes along and the proceeds are improperly dealt with by the person who has been so repeatedly accommodated. But a person does not cease to be a customer, within the meaning of the section, because his account is overdrawn, or the banker has allowed him a further overdraft. In the absence of some such restraint it is clear that tremendous facilities would be given to fraudulent dealings. For example, a thief might take a stolen cheque, quite regular upon the face of it, to a banker with whom he had never had any previous dealings and ask him to collect it for him, and there would be no chance of the true owner, who might not find out his loss for some time, obtaining any restitution. The collecting banker is placed upon inquiry, and he is bound to know something of the person for whom he collects, otherwise he runs the risk of being sued for the amount by the true owner. The banker knows presumably how to conduct his own business and can take care of himself, and so long as he is guilty of no negligence he will not be responsible for the fraudulent practices of any of his customers who turn out to be unsatisfactory in their dealings outside the bank. But if a customer is aware of any special method adopted by a banker in particular cases and acquiesces in the same, he cannot sue the banker for any loss which occurs in connection with the same (*Meyer v. Ser Hai Tong Banking and Insurance Co.*, 1913, App. Cas. 847).

Amending Act of 1906.

Again, a banker was not entitled until the passing of the Bills of Exchange (Crossed Cheques) Act, 1906, to the protection of sect. 82 of the Act of 1882, if he received payment of a cheque in any other respect than on behalf of a customer, *e.g.*, as a holder for value. The position of a collecting banker who credited the amount of a cheque to a customer before receiving payment of the same was considered in several cases—*Ex parte Richdale*, 1882, 19 Ch. D. 409, *Gordon v. London City and Midland Bank*, and *Gordon v. Capital and Counties Bank*, 1903, App. Cas. 240, and *Akrokerri (Atlantic) Mines, Limited v. Economic Bank*, 1904, 1 K.B. 465. The general result appeared to be that if the banker allowed his customer to draw immediately upon the amount of the cheques paid in, he had to take the risk of the customer having a defective title to the same,

and might, therefore, be liable to an action for conversion. Thus, a customer paid in a cheque bearing a forged indorsement of the payee to the X Bank for £100 on the 1st January. The banker credited his customer's account with the amount, and before receiving payment allowed the customer to withdraw the whole or a substantial portion of the £100. The banker was held liable to the true owner for the conversion of the cheque, whereas, as has been shown, if he had waited until payment was made to him by the banker upon whom the cheque was drawn he would have been freed from all liability. The amending Act of 1906 has changed the law in this respect, and it is now enacted that "A banker receives payment of a crossed cheque for a customer within the meaning of section eighty-two of the Bills of Exchange Act, 1882, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof."

A further protection is given in the case of crossed cheques by marking them "not negotiable." These words entirely take away the negotiability of a cheque, though they do not in any way affect its transfer. Even a holder for value has no better right to keep such a cheque than his immediate transferor, and the true owner can always reclaim it or the amount of it, no matter what has been done with it, although the banker who collects and the banker who pays are fully protected, provided the collection and the payment have been made in good faith, without negligence, and in the ordinary course of business. For example, a cheque is drawn by A, made payable to B, and indorsed to C. It is crossed and marked "not negotiable." The signatures or A and B are genuine. C is the true owner of the cheque, and he indorses it. It is lost or stolen, and comes into the possession of D, who takes it in good faith and gives value for it. D pays it into his own bank and his banker receives payment for his customer from the bank upon which the cheque is drawn. Both banks are exonerated from liability by statute. C discovers his loss and also that D has obtained payment. He can recover the amount from D. This position has been considered before, but with this difference as to the presence of the words "not negotiable." Since the cheque is not a negotiable instrument D does not obtain any better title than his immediate transferor had. The transferor had either stolen or found the cheque

Not Negotiable.

and was not the true owner of it. As regards the true owner C, D is in no better position than his transferor. His only remedy is to find out the transferor, if he can, and get him to refund the money. The remarks made in the present paragraph are intended to render the law upon the subject of "not negotiable" cheques as clear as possible, and are an expansion of sect. 81 of the Act, which runs as follows: "Where a person takes a crossed cheque which bears on it the words 'not negotiable' he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had."

Caution of Tradesman.

It will have been observed that there are many risks run by tradesmen who cash cheques to oblige their customers, unless they happen to be well acquainted with their customers, and their customers' financial stability, and so can recover from them in case of any loss arising. (To cash a cheque for a stranger is an act of folly.) Firstly, there is the risk as to the signature of the drawer being a forgery; secondly, there is a like risk as to the indorsement of the payee; thirdly, there is a chance of the shortage of assets at the bank; fourthly, there is the possibility of the cheque having been stopped; and, lastly, if the cheque is marked "not negotiable," there is the added risk that the transferor has a defective title, that is, that he is not a holder in due course. In any of these cases the tradesman must lose his money, and his chances of reimbursing himself for his loss will be practically nil. But if none of these difficulties arise, any person who has a cheque marked "not negotiable" in his possession may negotiate it in the same manner as any other cheque. It is scarcely necessary to add that the words "not negotiable" cannot be added to an open cheque, but only to one that is crossed. It is immaterial whether the crossed cheque is made payable to order or to bearer.

Marked Cheques.

Although there is no mention of it in the Act, it should be observed that there was a common practice amongst bankers of marking cheques, which meant that the banker who thus marked a cheque certified to another banker that the cheque would be paid, It did not, however, amount to a binding representation on the part of the banker to a holder for value that the cheque would be paid, and the holder of such a cheque had no rights against the banker who had marked

it. Since 1905, however, the custom of marking cheques has steadily diminished, and it is now, comparatively speaking, rare. Bank drafts have taken the place of marked cheques.

Again, in addition to crossing, it is now very common for a cheque to bear the words, " account of payee," or " account payee only."

Account of Payee.

These words have no legal significance—the Act makes no provision with respect to them—and the negotiability of a cheque which bears them is not in any way limited. They are an indication to the collecting banker as to what is to be done with the proceeds of the cheque, but the banker on whom the cheque is drawn, so long as he pays it to the right banker, is not concerned with the words " account payee." In practice, a banker who receives such a cheque for collection requires it to be placed to the credit of the account as indicated in the crossing. They may, however, in some cases constitute distinct notice to a receiving banker, and, if disregarded, may give rise to an action for negligence. For example, if a banker without making any inquiries allows a person who is unknown to him to open an account at his bank with such a cheque, and collects the money for it, he is liable for the amount of the cheque to the drawer, if any loss arises through this method of procedure. See *Bevan v. National Bank*, 1907, 23 T.L.R. 65 ; *Ladbroke & Co. v. Todd*, 1914, 111 L.T. 43 ; and *House Property Company of London v. London County and Westminster Bank*, 1915, 31 T.L.R. 479.

III—PROMISSORY NOTES

A PROMISSORY note is defined by sect. 83 of the Act as "an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer." If an instrument is drawn in the form of a note payable to the order of the maker, it does not become a promissory note within the meaning of the above definition unless and until it has been indorsed by the maker. An instrument, however, which is invalid as a note, may be valid as an agreement. But a proviso as to giving time for payment does not prevent a document being a valid promissory note. Thus, in *Kirkwood v. Carroll*, 1903, 1 K.B. 531, the following was held to be a valid note:—

Definition.

£125.

We jointly and severally promise to pay Mr. John Kirkwood (carrying on business in the name or style of the Provincial Union Bank) or order the sum of £125 for value received by instalments in manner following, that is to say, the sum of £5 on Thursday, the 31st day of January inst., and the sum of £5 on the Thursday in every succeeding week until the whole of the said £125 shall be fully paid, and in case default is made in payment of any one of the said instalments the whole amount remaining unpaid shall become due and payable forthwith. No time given to, or security taken from, or composition or arrangement entered into with either party hereto shall prejudice the rights of the holder to proceed against any other party.

No special form is essential to render an instrument valid as a promissory note, but it must be drawn in such a manner as to indicate that the drawer had the intention of making a note. Thus, it was held in *Hopkins v. Abbott*, 1875, L.R., 19 Eq. 222, that a banker's deposit note in the following

Form.

form, "Received of Mrs. E B one hundred and fifty pounds, to account for on demand" was not a promissory note. It is the general practice for a promissory note to be drawn as follows:—

London, Oct. 1st, 1918.

£50.

Four months after date I promise to pay to Mr. John Roberts or order the sum of fifty pounds for value received.

James Smith.

The note may be drawn for any time, or on demand, and may be made payable to bearer, instead of to order, as a bill of exchange or a cheque. James Smith is called the "maker" and John Roberts the "payee" of the promissory note. And it will be seen from the definition that in most respects a promissory note is like a bill of exchange, and by sect. 89 all the provisions of the Act of 1882 relating to bills of exchange are applicable, with the necessary modifications, to promissory notes, with the exception of (*a*) presentment for acceptance, (*b*) acceptance, (*c*) acceptance suprà protest, and (*d*) bills in a set.

Various restrictions were at one time imposed as to the amount for which promissory notes could be drawn. Now, however, a promissory note may be drawn, like a cheque, for any sum of money, large or small. The stamp on a promissory note is always an *ad valorem* one, and must be impressed, even though it is drawn payable on demand, or at sight, or on presentation, or not exceeding three days after date or sight. (See page 170.)

Amount and Stamp.

A promissory note being a negotiable instrument and therefore transferable like a bill of exchange or a cheque, it is necessary to examine what are the liabilities of the parties. The maker is primarily liable upon the instrument, occupying the position of the acceptor of a bill, and in default of his paying the note each of the indorsers can be sued in turn, the first indorser corresponding to the drawer of an accepted bill payable to the drawer's order. But no maker is liable until the note is signed by him and issued, that is, delivered by him to the payee or to bearer, and no other person is liable as a party to it unless and until his name appears upon it. Presentment for payment

Parties.

to the maker is necessary in order to render an indorser liable. A promissory note payable to bearer passes without indorsement, and so does one indorsed in blank. The liability of the transferor has been already explained under bills and also under cheques.

Note Payable on Demand.

A note is payable on demand when it is expressed to be so payable, or when no time for payment is stated. Such a note must be presented for payment within a reasonable time of its indorsement, otherwise the indorser is discharged. What is a reasonable time depends upon the particular facts of each case, the nature of the instrument, and the usage of trade. "Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue" (sect. 86, ss. 3). An indorser of a promissory note should add the date of his indorsement.

Presentment for Payment.

It has been stated already that a note must be presented to the maker for payment in the first instance, just as a bill of exchange must be presented to the acceptor. As to the particular place of presentment the Act is as follows: "Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable. Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice" (sect. 87, ss. 1, 3).

Contract and Warranty of Maker.

It will be recollected that for various purposes, the drawer, the acceptor, and each indorser enter into certain engagements and are estopped from denying certain matters connected with the bill to which they are parties. In the same way the maker of a promissory note, by making it, engages that he will pay the same according to its tenor, and precludes himself from denying to a holder in due course the existence of the payee and his then capacity to indorse.

Collateral Security.

A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose of the same. It is an undecided point whether the right to the security itself would pass with the instrument.

Joint and Joint and Several Note.

A promissory note may be made by two or more makers, and they may be liable jointly thereon, or jointly and severally, according to the tenor of the note. The following is an example of a joint promissory note :—

London, Oct. 1st, 1918.

£75.

Three months after date we promise to pay to Joseph Swift or order seventy-five pounds for value received.

Alfred Booth.
Charles Darling.

A joint and several note would have the words " we jointly and severally promise " or " we and each of us promise," instead of " we promise " as in a joint note. The distinction between the two is this : a joint promise by two or more is a promise by the whole number and not by each, a joint and several promise is a promise by the whole and also by each one separately. The latter kind of promissory note is preferable to the former. An unsatisfied judgment against any one of the makers of a joint note is a bar to proceedings being taken among the other makers ; but in the case of a joint and several note a judgment obtained against one maker is no discharge of the others. A partner, in his capacity as such, cannot bind his co-partners severally, but only jointly, but if a joint and several note is drawn he may bind himself severally and his firm jointly. It will be remembered that the acceptors of a bill of exchange, if there are more than one, can only be liable jointly, not jointly and severally. But there cannot be two or more makers liable in the alternative on a promissory note any more than there can be two or more drawees in the alternative on a bill of exchange. " Where a note runs ' I promise to pay ' and is signed by two or more persons it is deemed to be their joint and several note " (sect. 85. s, 2). Any person who signs a promissory note otherwise than as a maker incurs the liabilities of an indorser (sect. 56).

It has already been pointed out (see pages 35 and 36) what dangers may arise from signing a stamped paper and delivering the same to any person. The illustration there provided can be referred to, and the subject needs no further mention here.

Inchoate Instrument.

Bank notes are promissory notes made by a banker and payable on demand. As the result of the construction of various statutes it appears that the Bank of England has a monopoly of issuing notes in London and within a circle of three miles round. Outside this circle the monopoly is shared with those banks which were established before 1844. But such banks are subject to certain restrictions and conditions. Bank of England notes, which cannot be issued for sums of less than £5, form part of the ordinary currency of the kingdom, and are legal tender for the payment of all amounts above £5. In Scotland and Ireland, bank notes may be issued for sums of £1 and upwards, and local or county bank notes for £1 form the great bulk of the ordinary currency of the country. It is the custom of the Bank of England not to re-issue any of its notes which are paid in, but there is no legal restriction upon the re-issue of bank notes, as there is upon that of ordinary promissory notes.

Bank Notes.

It is often supposed that there is some peculiar efficacy in giving notice to a bank that one of its notes has been lost or stolen. This is known as stopping. But it is really of very little value. A bank note, which is in all respects valid on the face of it, is a negotiable instrument, and any holder in due course has a right to it against the whole world. The true owner may seek out the thief or the finder and compel restitution from him, but when once the note has passed for value and in due course to another person the remedy of the true owner is gone. The so-called stopping may help to trace the people through whose hands a lost or stolen note has gone, but no banker can refuse payment of one of his own notes to the holder in due course. When it is practically certain that the note has been lost, the owner should request the banker to give him a new note in place of the lost one, at the same time offering an indemnity, in case the lost note should turn up and the banker be compelled to pay it. But he could not obtain payment of a lost note unless he knew the number of it.

Stopping Notes.

Treasury Notes.

At the beginning of the Great War in 1914, the Government authorised the issue of notes of the value of £1 and 10s., and these entirely took the place of the ordinary gold coinage. They were made legal tender for any amount. It remains to be seen whether their use will become permanent.

IV—I O U

THE last of the instruments to be referred to in this volume is that which is commonly called an I O U—an abbreviation of the words "I owe you." It is in no sense a negotiable instrument, but a simple acknowledgment of a debt. For all practical purposes, however, it is as valuable as a negotiable instrument, when there is a question of suing for a debt which has been created between the parties to it.

What it is.

This kind of acknowledgment is extremely common, and its form is quite stereotyped. It is usually met with as follows:—

Form.

London, Sept. 10th, 1918.

To Mr. Alfred Thompson,

I O U £100.

John Jones.

The amount is frequently inserted in words as well as in figures.

When there is a debt existing or alleged to exist between parties, and the debt is affirmed on one side and denied on the other, the evidence of the plaintiff, other things being equal, is of the same weight as that of the defendant, and since the plaintiff must prove his case, he runs the risk of being non-suited in the absence of corroboration. The existence of any documentary evidence then becomes valuable. In an action to recover money lent, the production of an I O U by the plaintiff, signed by the defendant, is evidence of an account stated between the parties, though not of the amount of money lent. A defendant may give evidence as to the amount if he chooses, but he is hardly likely to be credited with such a document, proved to be in his own handwriting or bearing his signature, confronting him.

Its Value.

As the I O U is merely evidence of a debt it does not require any stamp. And it is not advisable that it should be worded any

differently from the above example. If words are added making a promise of payment at a particular time, it might be construed as a promissory note. It could not then be given in evidence at all, as a promissory note must be stamped before it is made. And, in addition, the inclusion of certain other words might convert it into an agreement. And when the amount for which the acknowledgment is given exceeds £5 an agreement stamp would be necessary. There is less difficulty, however, if the instrument is held to be an agreement rather than a promissory note. An agreement may always be stamped after its execution—up to fourteen days with an ordinary agreement stamp, and afterwards upon payment of the prescribed penalty. A promissory note can never be stamped after the date of its issue.

No Stamp.

The names of the creditor and the debtor should always appear. This will prevent difficulties. If the name of the debtor alone appears, there will be a *primâ facie* presumption that there is an indebtedness on his part to the person who produces the I O U. This presumption, however, is capable of being rebutted, and it is always open to the debtor to show that he was never indebted to the holder, but that the latter has obtained the document from the real creditor. If that is so, and the debt has not been legally assigned, the holder cannot succeed in his action.

Names.

V—SUPPLEMENTARY

CHAPTER I

ACTION AT LAW

THE person who is entitled to sue upon a bill of exchange, a cheque, or a promissory note, is the holder of the same, that is, the person who has the right to receive the money. It is a good defence to an action on the instrument that the bill, cheque, or note is not in the possession of the plaintiff, but of an indorsee; but if the indorsee only holds the document as agent or trustee for the plaintiff, the latter may still sue, though the bill is outstanding in the hands of his trustee or agent at the time of the commencement of the action.

General.

A right of action on a bill of exchange arises when the bill is dishonoured either by non-acceptance, or, having been accepted, by non-payment. The holder must at once give the necessary notices of dishonour, and it is most important for him to recollect that in the absence of such notices any indorser or the drawer may be absolutely released from all liability, both on the bill and on the consideration for the same. Special precautions should be observed when a notice is sent by post. It is a presumption of law that if a letter is posted and is not afterwards returned through the Dead Letter Office it was received in due course by the person to whom it was addressed. But the sender must be prepared with ample evidence, if necessary, of the despatch of the letter. A copy of the notice should be preserved, so that it can be produced, if necessary, and it is advisable to have the person in court who actually posted the letter. The sending of the notice is preliminary to the issue of a writ in the High Court, or of a plaint in the County Court. A promissory note is only presented for payment, and if this is refused it is dishonoured and notice must be given to all the indorsers whom it is intended to charge. Similarly, if a cheque is not paid when presented to the banker upon whom it is drawn, the holder should at once acquaint the drawer and any indorsers whose names appear thereon with the fact.

Preliminary.

Where a holder in due course has taken a bill, he has given consideration for it, and, as it has been pointed out, his remedy for his debt has been simply suspended. When the time of maturity arrives he has two courses which he may pursue—he may sue upon the bill or upon the consideration, unless there are special circumstances, which have been already detailed, which preclude him from taking the latter course. But it is a distinct advantage to sue upon the bill rather than upon the consideration. In the latter case the plaintiff is put to the proof of many details, whereas in the former he produces the bill, the amount of his claim is fixed, and it is for the defendant to set up any defences he may have showing why judgment should not be given in the plaintiff's favour. Moreover, there is the great advantage of expedition, and in many cases judgment can be obtained with the utmost celerity, since there is a special procedure provided for the trial of cases in which a liquidated, that is, a specified, amount is claimed.

Advantages in Suing.

An action is commenced in the High Court by the issue of a writ, which is served upon the defendant. In the case of a claim for liquidated damages the writ may be, as it is called, "specially indorsed," that is, on the back of the writ there is set out shortly, though with all the particulars that are necessary to show what is the nature of the claim, the amount for which the plaintiff sues and the way in which it arises. This course is almost invariably adopted with bills, cheques, and promissory notes. The following is a copy of the indorsement in the case of *Lawrence & Sons v. Willcocks*, 1892, 1 Q.B. 696, in which a question arose as to a writ being specially indorsed where a claim for interest was added. (As to the claim for interest, see p. 85.) "*The plaintiff's claim is* £20 17*s.* 8*d.*, *principal, noting, and interest on the defendant's dishonoured acceptance. Particulars:* 1891, *Nov.* 21. *To amount of bill of exchange, dated June* 18, 1891, *due this day, accepted by the defendant in favour of Chudleigh Brothers, and by them indorsed to the plaintiffs for full value and consideration,* £20 10*s.* *To noting and interest thereon to date,* 7*s.* 8*d.* *Total,* £20 17*s.* 8*d.* *The plaintiffs also claim interest on* £20 10*s.* *of the above sum at* £5 *per cent. from date hereof, until payment.*" After the writ has been served the defendant has eight days in which to consider what course he will pursue. If he does nothing the plaintiff is

Procedure in High Court.

allowed to sign judgment for the amount claimed and costs. But should the defendant enter an appearance within the eight days, the plaintiff must take out a summons calling upon the defendant to appear before a Master of the High Court, or the local Registrar in country cases, within four days to show cause why judgment should not be entered against him. The plaintiff must likewise file an affidavit in support of his claim, or have an affidavit prepared for filing by some person who is fully acquainted with the facts of the case, setting out how it arises and that there is no defence to the action. This affidavit is also served upon the defendant. The defendant must then, if he is still determined to contest the action, file and serve an affidavit in reply showing the grounds of his defence, and to this affidavit the plaintiff may prepare a reply if he considers it necessary to do so. If the Master or the Registrar, as the case may be, is satisfied that there is no defence, he orders judgment to be entered for the plaintiff. If there appears to be some slight defence, but the case is not likely to require a prolonged hearing, the action is placed in what is known as the " Short Cause List," and is set down for a speedy trial on one of the specially appointed days. If the case is one which seems to present great difficulties, or will require a prolonged hearing, leave to defend is given, and the action is placed in the ordinary list. Terms may also be imposed upon the defendant as a condition of leave to defend, *e.g.*, payment of the whole or a part of the money claimed into court. A plaintiff must take the advice of a legal practitioner as to the course he ought to adopt, especially if it is clear that a substantial defence may be set up, since it is provided that if proceedings of a summary nature—known as Order XIV procedure—are taken and the case does not clearly fall within the Order, the plaintiff may be ordered to pay forthwith the costs incurred by the defendant. There is a right of appeal from the Master or the Registrar to the Judge in Chambers. The plaintiff is not bound to sue one party only, for it is provided by Order XVI, rule 6, that " the plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally liable on . . . bills of exchange and promissory notes."

The nature of the defences which may be set up in ordinary cases have been made apparent in the preceding pages. Amongst them are infancy, incapacity to contract, fraud, duress, forgery, no consideration, the Statute of Limitation, and the like. But it may

happen that a defendant has a right of action on some ground or other against the plaintiff quite distinct from any of the usual defences. This may be either a set-off or a counterclaim.

Set-off and Counterclaim.

The former arises where the defendant is entitled to an abatement from the plaintiff's claim through some circumstance arising out of the same matter, as, for example, where an action is brought on a bill for £100 and the defendant asserts that he has paid £30 on account of it. The latter is a distinct right of action arising out of something which has no connection with the plaintiff's claim. If the defendant intends to rely upon either of these he must set them up in his affidavit, though he is not compelled to do so. The whole of the matters in dispute between the parties can then be settled at once in one action, and there will be a considerable saving in costs. It is, however, in the discretion of the court to refuse to hear a counterclaim at the same time as an original action, if such a proceeding is likely to cause inconvenience. If the counterclaim of the defendant is not only against the original plaintiff, but against other parties in addition, these latter may be brought into the case by the notice of the counterclaim being served upon them just as if it were a writ in the action.

There is also a special procedure provided for actions dealing with bills, cheques, and promissory notes in county courts. The jurisdiction is limited to cases where the amount

Procedure in County Courts.

claimed does not exceed £50—the County Court Act of 1903 not having affected this particular class of case. Moreover, proceedings must be commenced within six months after the bill, cheque, or note has become due and payable. The procedure, however, is somewhat technical, and neither a plaintiff who sues nor a defendant who desires to defend should act without proper professional advice. Suffice it to say that a defendant in an action of this character can only get leave to defend by bringing the amount into court, or by obtaining special leave to contest the claim after filing an affidavit which satisfies the judge or registrar that he has *primâ facie* a legal or an equitable defence. The question of costs is also a matter for serious consideration; and no action ought to be started in the High Court on a bill, cheque, or note where the amount is less than £50, unless it is pretty clear that judgment can be obtained within the time limited by the Rules of the High Court, otherwise costs will only

be allowed on the County Court scale. When judgment has been obtained execution can be levied, but all subsequent proceedings are beyond the scope of the present volume.

Other Actions.

Independently of actions upon bills, cheques, and notes to recover the amount of them, there are other actions which may be instituted in respect of them, such as for the recovery of a bill or other negotiable instrument which is wrongfully withheld from the lawful owner, or for an injunction restraining a person from dealing with the same where it has been obtained by fraud, etc. If the possessor should transfer the bill, after an injunction has been granted and served upon him, he will render himself liable to attachment for contempt of court, but a holder in due course will not be prejudiced in his rights by anything which his transferor has done. Again, where the transferee takes a negotiable instrument without first obtaining the indorsement of his transferor, if the signature of the transferor is essential to pass the title in the document, the transferee may obtain an order from the court compelling the transferor to indorse the same (sect. 31, ss. 4).

CHAPTER II

STAMPS

THE stamp duties payable on bills, cheques, and promissory notes, under the Stamp Act, 1891, as amended by the Finance Act, 1899, and the Revenue Act, 1909, are as follows :—

Bill of Exchange.	s.	d.
Payable on demand, or at sight, or on presentation, or not exceeding three days after date or sight, for any amount		1
All others :—		
When the amount does not exceed £5		1
When the amount exceeds £5 but does not exceed £10		2
,, £10 ,, £25		3
,, £25 ,, £50		6
,, £50 ,, £75		9
,, £75 ,, £100	1	0

When the amount exceeds £100, 1s. for the first £100, and an additional 1s. for every fractional part of £100. Thus a bill, not payable on demand, or not exceeding three days after date or sight, for £835, requires a 9s. stamp.

N.B.—Section 2 of the Stamp Act, 1891, is as follows :—

" All stamp duties for the time being chargeable by law upon any instrument are to be paid and denoted according to the regulations in this Act contained ; and, except where express provision is made to the contrary, are to be denoted by impressed stamps only."

By sect. 34, ss. 1, of the same Act, it is provided that " the fixed duty of one penny on a bill of exchange payable on demand or at sight or on presentation may be denoted by an adhesive stamp, which, when the bill is drawn in the United Kingdom, is to be cancelled by the person by whom the bill is signed before he delivers it out of his hands, custody, or power."

Consequently, an impressed stamp may be used in the case of inland bills of exchange (including cheques) payable on demand or at sight or on presentation. It is doubtful whether an adhesive

stamp may be used when the bill of exchange is payable at a period not exceeding three days after date or sight, owing to the wording of sect. 2 of the Act of 1891. Promissory notes may not be stamped with an adhesive stamp. Dealing with bills of exchange which are improperly stamped renders the person so doing liable to a penalty of £10.

By sect. 36 of the Finance Act, 1918, it is provided as follows :—

" (1) Twopence shall be substituted for one penny as the stamp duty on all bills of exchange and promissory notes chargeable under the first schedule to the Stamp Act, 1891, with duty at the rate of one penny and drawn on or after the 1st September, 1918, and twopence shall accordingly be substituted for one penny in sections 34 and 38 of the Stamp Act, 1891

" (2) The provisions of sub-section (2) of section 38 of the Stamp Act, 1891, shall apply so as to enable an adhesive penny stamp to be fixed on any bills of exchange to which that sub-section applies, being bills which are liable to a duty of twopence under this section and are stamped only with a penny stamp, as they apply with respect to the fixing of a stamp on an unstamped bill.

" (3) Sub-section (1) of section 58 of the Stamp Act, 1891, shall not operate so as to render any bill of exchange which is liable to a duty of twopence under this section and is stamped with a penny stamp invalid for any purpose until the 1st December, 1918, if the person who takes or receives the bill fixes thereto an adhesive stamp of one penny and cancels the stamp."

A foreign bill, drawn and expressed to be payable out of the United Kingdom, which is actually paid, indorsed, or negotiated in the United Kingdom, is stamped as an inland bill, except that when the amount is between £50 and £100, a 6d. stamp only is required, and when the amount exceeds £100, a 6d. stamp is required for each fractional part of £100. The stamp is an adhesive one. (See the Finance Act, 1899.)

Cheques.

For whatever amount .. .. 2d.

This is by virtue of the Finance Act, 1918. (See above.)

Promissory Notes.

The stamp duties are the same as for bills of exchange, but there is no difference between promissory notes payable on demand or at sight, and those payable at a future date. Thus, a promissory

note for £30, even if payable on demand or at sight, or not exceeding three days after sight, must bear a 6d. stamp. See *Oettinger v. Cohn*, 1908, 1 K.B. 582. The stamp is always an impressed one.

Unstamped Documents.

Any document which is required to be stamped in accordance with the provisions of the Stamp Act, 1891, cannot, except in criminal proceedings, be received in evidence for any purpose whatever, if unstamped, whether for the purpose of enforcing it, or for any collateral purpose (*Fengl v. Fengl*, 1914, P. 274).

APPENDIX

Bills of Exchange Act, 1882
[45 & 46 Vict., C. 61]

ARRANGEMENT OF SECTIONS A.D. 1882

PART I
PRELIMINARY

Section.
1. Short title.
2. Interpretation of terms.

PART II
BILLS OF EXCHANGE
Form and Interpretation

3. Bill of exchange defined.
4. Inland and foreign bills.
5. Effect where different parties to bill are the same person.
6. Address to drawee.
7. Certainty required as to payee.
8. What bills are negotiable.
9. Sum payable.
10. Bill payable on demand.
11. Bill payable at a future time.
12. Omission of date in bill payable after date.
13. Ante-dating and post-dating.
14. Computation of time of payment.
15. Case of need.
16. Optional stipulations by drawer or indorser.
17. Definition and requisites of acceptance.
18. Time for acceptance.
19. General and qualified acceptances.
20. Inchoate instruments.
21. Delivery.

Capacity and Authority of Parties

22. Capacity of parties.
23. Signature essential to liability.
24. Forged or unauthorised signature.
25. Procuration signatures.
26. Person signing as agent or in representative capacity.

The Consideration for a Bill

27. Value, and holder for value.
28. Accommodation bill or party.
29. Holder in due course.
30. Presumption of value and good faith.

A.D. 1882.

Negotiation of Bills

Section.
31. Negotiation of bill.
32. Requisites of a valid indorsement.
33. Conditional indorsement.
34. Indorsement in blank and special indorsement.
35. Restrictive indorsement.
36. Negotiation of over-due or dishonoured bill.
37. Negotiation of bill to party already liable thereon.
38. Rights of the holder.

General Duties of the Holder

39. When presentment for acceptance is necessary.
40. Time for presenting bill payable after sight.
41. Rules as to presentment for acceptance, and excuses for non-presentment.
42. Non-acceptance.
43. Dishonour by non-acceptance and its consequences.
44. Duties as to qualified acceptances.
45. Rules as to presentment for payment.
46. Excuses for delay or non-presentment for payment.
47. Dishonour by non-payment.
48. Notice of dishonour and effect of non-notice.
49. Rules as to notice of dishonour.
50. Excuses for non-notice and delay.
51. Noting or protest of bill.
52. Duties of holder as regards drawee or acceptor.

Liabilities of Parties

53. Funds in hands of drawee.
54. Liability of acceptor.
55. Liability of drawer or indorser.
56. Stranger signing bill liable as indorser.
57. Measure of damages against parties to dishonoured bill.
58. Transferor by delivery and transferee.

Discharge of Bill

59. Payment in due course.
60. Banker paying demand draft whereon indorsement is forged.
61. Acceptor the holder at maturity.
62. Express waiver.
63. Cancellation.
64. Alteration of bill.

Acceptance and Payment for Honour

65. Acceptance for honour suprà protest.
66. Liability of acceptor for honour.
67. Presentment to acceptor for honour.
68. Payment for honour suprà protest.

Lost Instruments

69. Holder's right to duplicate of lost bill.
70. Action on lost bill.

Bill in a Set

71. Rules as to sets.

Conflict of Laws

72. Rules where laws conflict.

A.D. 1882

PART III

CHEQUES ON A BANKER

Section.
73. Cheque defined.
74. Presentment of cheque for payment.
75. Revocation of banker's authority.

Crossed Cheques

76. General and special crossings defined.
77. Crossing by drawer or after issue.
78. Crossing a material part of cheque.
79. Duties of banker as to crossed cheques.
80. Protection to banker and drawer where cheque is crossed.
81. Effect of crossing on holder.
82. Protection to collecting banker.

PART IV

PROMISSORY NOTES

83. Promissory note defined.
84. Delivery necessary.
85. Joint and several notes.
86. Note payable on demand.
87. Presentment of note for payment.
88. Liability of maker.
89. Application of Part II to notes.

PART V

SUPPLEMENTARY

90. Good faith.
91. Signature.
92. Computation of time.
93. When noting equivalent to protest.
94. Protest when notary not accessible.
95. Dividend warrants may be crossed.
96. Repeal.
97. Savings.
98. Saving of summary diligence in Scotland.
99. Construction with other Acts, &c.
100. Parol evidence allowed in certain judicial proceedings in Scotland.

SCHEDULE I.—Form.

SCHEDULE II.—Repeals.

CHAPTER 61

A.D. 1882

An Act to codify the law relating to Bills of Exchange, Cheques, and Promissory Notes. [18th August, 1882.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Part I

Preliminary

Short title.

1. This Act may be cited as the Bills of Exchange Act, 1882

Interpretation of terms.

2. In this Act, unless the context otherwise requires.—

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set off.

"Banker" includes a body of persons whether incorporated or not who carry on the business of banking.

"Bankrupt" includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Issue" means the first delivery of a bill or note, complete in form to a person who takes it as a holder.

"Person" includes a body of persons whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

Part II

Bills of Exchange

Form and Interpretation

Bill of exchange defined.

3.—(1.) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.

(2.) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

A.D. 1882.

(3.) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (*a*) an indication of a particular fund out of which the drawee is to re-imburse himself or a particular account to be debited with the amount, or (*b*) a statement of the transaction which gives rise to the bill, is unconditional.

(4.) A bill is not invalid by reason—

(*a*.) That it is not dated;

(*b*.) That it does not specify the value given, or that any value has been given therefor;

(*c*.) That it does not specify the place where it is drawn or the place where it is payable.

Inland and foreign bills.

4.—(1.) An inland bill is a bill which is or on the face of it purports to be (*a*) both drawn and payable within the British Islands, or (*b*) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill.

For the purposes of this Act "British Islands" mean any part of the United Kingdom of Great Britain and Ireland, the islands of Man, Guernsey, Jersey, Alderney, and Sark, and the islands adjacent to any of them being part of the dominions of Her Majesty.

(2.) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

Effect where different parties to bill are the same person.

5.—(1.) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

(2.) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

Address to drawee.

6.—(1.) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2.) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

Certainty required as to payee.

7.—(1.) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2.) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3.) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

What bills are negotiable.

8.—(1.) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2.) A negotiable bill may be payable either to order or to bearer.

(3.) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4.) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

A.D. 1882.

(5.) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

Sum payable

9.—(1.) The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid—

(*a.*) With interest.

(*b.*) By stated instalments.

(*c.*) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

(*d.*) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

(2.) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3.) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

Bill payable on demand.

10.—(1.) A bill is payable on demand—

(*a.*) Which is expressed to be payable on demand, or at sight, or on presentation; or

(*b.*) In which no time for payment is expressed.

(2.) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

Bill payable at a future time.

11. A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable—

(1.) At a fixed period after date or sight.

(2.) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

Omission of date in bill payable after date.

12. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

Ante-dating and post-dating.

13.—(1.) Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2.) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

Computation of time of payment.

14. Where a bill is not payable on demand the day on which it falls due is determined as follows:—

(1.) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: Provided that—

(*a*.) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day; A.D. 1882.

(*b*.) When the last day of grace is a bank holiday (other than Christmas Day or Good Friday) under the Bank Holidays Act, 1871, and Acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a Bank Holiday, the bill is due and payable on the succeeding business day. 34 & 35 Vict. c. 17.

(2.) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

(3.) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery.

(4.) The term "month" in a bill means calendar month.

Case of need

15. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

Optional stipulations by drawer or indorser.

16. The drawer of a bill, and any indorser, may insert therein an express stipulation—

(1.) Negativing or limiting his own liability to the holder:

(2.) Waiving as regards himself some or all of the holder's duties.

Definition and requisites of acceptance.

17.—(1.) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2.) An acceptance is invalid unless it complies with the following conditions, namely:

(*a*.) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.

(*b*.) It must not express that the drawee will perform his promise by any other means than the payment of money.

Time for acceptance

18. A bill may be accepted—

(1.) Before it has been signed by the drawer, or while otherwise incomplete:

(2.) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment:

(3.) When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

General and qualified acceptances

19.—(1.) An acceptance is either (*a*) general or (*b*) qualified.

(2.) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

A.D. 1882.

(*a.*) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated:

(*b.*) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(*c.*) local, that is to say, an acceptance to pay only at a particular specified place:

An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere:

(*d.*) qualified as to time:

(*e.*) the acceptance of some one or more of the drawees, but not of all.

Inchoate instruments.

20.—(1.) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a primâ facie authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a primâ facie authority to fill up the omission in any way he thinks fit.

(2.) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact.

Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

Delivery.

21.—(1.) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2.) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(*a.*) in order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be:

(*b.*) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3.) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Capacity and Authority of Parties

Capacities of parties.

22.—(1.) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations. A.D. 1882.

(2.) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

Signature essential to liability.

23. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such: Provided that—

(1.) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name:

(2.) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

Forged or unauthorised signature.

24. Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorised signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

Provided that nothing in this section shall affect the ratification of an unauthorised signature not amounting to a forgery.

Procuration signature.

25. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

Person signing as agent or in representative capacity.

26.—(1.) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2.) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted.

The Consideration for a Bill

Value and holder for value

27.—(1.) Valuable consideration for a bill may be constituted by—

(*a.*) Any consideration sufficient to support a simple contract;

(*b.*) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2.) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3.) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

A.D. 1882.

Accommodation bill or party.

28.—(1.) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2.) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

Holder in due course.

29.—(1.) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions; namely:—

(*a.*) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact:

(*b.*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2.) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3.) A holder (whether for value or not) who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

Presumption of value and good faith.

30.—(1.) Every party whose signature appears on a bill is primâ facie deemed to have become a party thereto for value.

(2.) Every holder of a bill is primâ facie deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

Negotiation of Bills

Negotiation of bill.

31.—(1.) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2.) A bill payable to bearer is negotiated by delivery.

(3.) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4.) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5.) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

Requisites of a valid indorsement.

32. An indorsement in order to operate as a negotiation must comply with the following conditions, namely:—

(1.) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognised, is deemed to be written on the bill itself. A.D. 1882.

(2.) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally does not operate as a negotiation of the bill.

(3.) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.

(4.) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.

(5.) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(6.) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

Conditional indorsement.

33. Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not

Indorsement in blank and special indorsement

34.—(1.) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2.) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3.) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4.) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

Restrictive indorsement.

35.—(1.) An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D only," or "Pay D for the account of X," or "Pay D or order for collection."

(2.) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorise him to do so.

(3.) Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

Negotiation of overdue or dishonoured bill.

36.—(1. Where a bill is negotiable in its origin it continues to be negotiable until it has been (*a*) restrictively indorsed or (*b*) discharged by payment or otherwise.

(2.) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

A.D. 1882.

(3.) A bill payable on demand is deemed to be overdue within the meaning, and for the purposes, of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4.) Except where an indorsement bears date after the maturity of the bill, every negotiation is primâ facie deemed to have been effected before the bill was overdue.

(5.) Where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this sub-section shall affect the rights of a holder in due course.

Negotiation of bill to party already liable thereon.

37. Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

Rights of the holder.

38. The rights and powers of the holder of a bill are as follows :—

(1.) He may sue on the bill in his own name :

(2.) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill :

(3.) Where his title is defective (*a*) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (*b*) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

General Duties of the Holder

When presentment for acceptance necessary.

39.—(1.) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2.) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee it must be presented for acceptance before it can be presented for payment.

(3.) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4.) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

Time for presenting bill payable after sight.

40.—(1.) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

(2.) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3.) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

A.D. 1882.

Rules as to presentment for acceptance and excuses for non-presentment.

41.—(1.) A bill is duly presented for acceptance which is presented in accordance with the following rules:—

(*a.*) The presentment must be made by or on behalf of the holder to the drawee or to some person authorised to accept or refuse acceptance on his behalf at a reasonable hour on a business day and before the bill is overdue:

(*b.*) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only:

(*c.*) Where the drawee is dead presentment may be made to his personal representative:

(*d.*) Where the drawee is bankrupt, presentment may be made to him or to his trustee:

(*e.*) Where authorised by agreement or usage, a presentment through the post office is sufficient.

(2.) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

(*a.*) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill:

(*b.*) Where, after the exercise of reasonable diligence, such presentment cannot be effected:

(*c.*) Where although the presentment has been irregular, acceptance has been refused on some other ground.

(3.) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

Non-acceptance.

42.—(1.) When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

Dishonour by non-acceptance and its consequences.

43.—(1.) A bill is dishonoured by non-acceptance—

(*a.*) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or

(*b.*) when presentment for acceptance is excused and the bill is not accepted.

(2.) Subject to the provisions of this Act when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

Duties as to qualified acceptances.

44.—(1.) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2.) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3.) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder he shall be deemed to have assented thereto.

A.D. 1882.

Rules as to presentment for payment.

45. Subject to the provisions of this Act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules:—

(1.) Where the bill is not payable on demand, presentment must be made on the day it falls due.

(2.) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

(3.) Presentment must be made by the holder or by some person authorised to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorised to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.

(4.) A bill is presented at the proper place—

(*a.*) Where a place of payment is specified in the bill and the bill is there presented.

(*b.*) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.

(*c.*) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known.

(*d.*) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.

(5.) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorised to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.

(6.) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

(7.) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

(8.) Where authorised by agreement or usage a presentment through the post office is sufficient.

Excuses for delay or non-presentment for payment.

46.—(1.) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

(2.) Presentment for payment is dispensed with,—

(*a.*) Where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected.

The fact that the holder has reason to believe that the bill will,

on presentment, be dishonoured, does not dispense with the necessity for presentment.

(*b.*) Where the drawee is a fictitious person.

(*c.*) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

(*d.*) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser and he has no reason to expect that the bill would be paid if presented.

(*e.*) By waiver of presentment, express or implied.

Dishonour by non-payment.

47.—(1.) A bill is dishonoured by non-payment (*a*) when it is duly presented for payment and payment is refused or cannot be obtained, or (*b*) when presentment is excused and the bill is overdue and unpaid.

(2.) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

Notice of dishonour and effect of non notice.

48. Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged; Provided that—

(1.) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.

(2.) Where a bill is dishonoured by non-acceptance and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

Rules as to notice of dishonour.

49. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules:—

(1.) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

(2.) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party be his principal or not.

(3.) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(4.) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(5.) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.

(6.) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

(7.) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

A.D. 1882.

(8.) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.

(9.) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.

(10.) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.

(11.) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.

(12.) The notice may be given as soon as the bill is dishonoured and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

(*a.*) where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill;

(*b.*) where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.

(13.) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

(14.) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

(15.) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post office.

Excuses for non-notice and delay.

50.—(1.) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

(2.) Notice of dishonour is dispensed with—

(*a.*) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or indorser sought to be charged:

(*b.*) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice:

(*c.*) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the

drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment: A.D. 1882.

(*d.*) As regards the indorser in the following cases, namely, (1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation.

Noting or protest of bill.

51.—(1.) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

(2.) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3.) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4.) Subject to the provisions of this Act, when a bill is noted or protested, it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.[1]

(5.) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(6.) A bill must be protested at the place where it is dishonoured: Provided that—

(*a.*) When a bill is presented through the post office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received during business hours, then not later than the next business day:

(*b.*) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7.) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(*a.*) The person at whose request the bill is protested:

(*b.*) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8.) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy of written particulars thereof.

[1] The words "it must be noted on the day of its dishonour" are repealed, and the following words substituted therefor: "it may be noted on the day of its dishonour and must be noted not later than the next succeeding business day." This is by virtue of the Bills of Exchange (Time of Noting) Act, 1917 (7 & 8 Geo. V, c. 48, s. 1).

A.D. 1882.

(9.) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

Duties of holder as regards drawee or acceptor.

52.—(1.) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

(2.) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3.) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.

(4.) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Liabilities of Parties

Funds in hands of drawee.

53.—(1.) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This sub-section shall not extend to Scotland.

(2.) In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favour of the holder, from the time when the bill is presented to the drawee.

Liability of acceptor.

54. The acceptor of a bill, by accepting it—

(1.) Engages that he will pay it according to the tenor of his acceptance:

(2.) Is precluded from denying to a holder in due course—

(*a.*) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;

(*b.*) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(*c.*) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

Liability of drawer or indorser.

55.—(1.) The drawer of a bill by drawing it—

(*a.*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(*b.*) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2.) The indorser of a bill by indorsing it—

(*a.*) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(*b.*) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements; A.D. 1882.

(*c.*) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

Stranger signing bill liable as indorser.

56. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

Measure of damages against parties to dishonoured bill.

57. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:—

(1.) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(*a.*) The amount of the bill:

(*b.*) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case:

(*c.*) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.

(2.) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

(3.) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

Transferor by delivery and transferee.

58.—(1.) Where the holder of a bill payable to bearer negotiates it by delivery, without indorsing it, he is called a "transferor by delivery."

(2.) A transferor by delivery is not liable on the instrument.

(3.) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

Discharge of Bill

Payment in due course.

59.—(1.) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(2.) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged; but

(*a*) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

A.D. 1882.

(*b.*) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3.) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

Banker paying demand draft whereon indorsement is forged.

60. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

Acceptor the holder at maturity.

61. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

Express waiver.

62.—(1.) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2.) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

Cancellation.

63.—(1.) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2.) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3.) A cancellation made unintentionally, or under a mistake, or without the authority of the holder is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

Alteration of bill.

64.—(1.) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers.

Provided that,

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(2.) In particular the following alterations are material, namely any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Acceptance and Payment for Honour

A.D. 1882.

Acceptance for honour suprà protest

65.—(1.) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill suprà protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2.) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3.) An acceptance for honour suprà protest in order to be valid must—

(*a.*) be written on the bill, and indicate that it is an acceptance for honour:

(*b.*) be signed by the acceptor for honour:

(4.) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5.) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour.

Liability of acceptor for honour.

66.—(1.) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2.) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

Presentment to acceptor for honour.

67.—(1.) Where a dishonoured bill has been accepted for honour suprà protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2.) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3.) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4.) When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him.

Payment for honour suprà protest.

68.—(1.) Where a bill has been protested for non-payment, any person may intervene and pay it suprà protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2.) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3.) Payment for honour suprà protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.

A.D. 1882

(4.) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5.) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6.) The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up he shall be liable to the payer for honour in damages.

(7.) Where the holder of a bill refuses to receive payment suprà protest he shall lose his right of recourse against any party who would have been discharged by such payment.

Lost Instruments

Holder's right to duplicate lost bill.

69. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

Action on lost bill.

70. In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

Bill in a Set

Rules as to sets.

71.—(1.) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(2.) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills

(3.) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4.) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5.) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6.) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Conflict of Laws A.D. 1882.

Rules where laws conflict

72. Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows:—

(1.) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance supra protest, is determined by the law of the place where such contract was made.

Provided that—

(*a.*) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue:

(*b.*) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.

(2.) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance supra protest of a bill, is determined by the law of the place where such contract is made.

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of the United Kingdom.

(3.) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

(4.) Where a bill is drawn out of but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

(5.) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

Part III

Cheques on a Banker

Cheque defined.

73. A cheque is a bill of exchange drawn on a banker payable on demand.

Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

Presentment of cheque for payment.

74. Subject to the provisions of this Act—

(1.) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say

A.D. 1882

to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.

(2.) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3.) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

Revocation of banker's authority.

75. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

(1.) Countermand of payment:

(2.) Notice of the customer's death.

Crossed Cheques

General and special crossings defined

76.—(1.) Where a cheque bears across its face an addition of—

(*a.*) The words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable"; or

(*b.*) Two parallel transverse lines simply, either with or without the words "not negotiable";

that addition consitutes a crossing, and the cheque is crossed generally.

(2.) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

Crossing by drawer or after issue.

77.—(1.) A cheque may be crossed generally or specially by the drawer.

(2.) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3.) Where a cheque is crossed generally the holder may cross it specially.

(4.) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5.) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6.) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

Crossing a material part of cheque.

78. A crossing authorised by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.

Duties of banker as to crossed cheques.

79.—(1.) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2.) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or ir crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

A.D. 1882.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

Protection to banker and drawer where cheque is crossed.

80. Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

Effect of crossing on holder.

81. Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

Protection to collecting banker

82. Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.[1]

Part IV

Promissory Notes

Promissory note defined

83.—(1.) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(2.) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3.) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4.) A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note.

Delivery necessary

84. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

Joint and several notes.

85.—(1.) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenor.

(2.) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

[1] See the amendment of this section by sect. 1 of the Bills of Exchange (Crossed Cheques) Act, 1906.

A.D. 1882.

Note payable on demand.

86.—(1.) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2.) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3.) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

Presentment of note for payment.

87.—(1.) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2.) Presentment for payment is necessary in order to render the indorser of a note liable.

(3.) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

Liability of maker.

88. The maker of a promissory note by making it—

(1.) Engages that he will pay it according to its tenor;

(2.) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

Application of Part II. to notes.

89.—(1.) Subject to the provisions in this Part and, except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2.) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3.) The following provisions as to bills do not apply to notes; namely, provisions relating to—

(*a.*) Presentment for acceptance;

(*b.*) Acceptance;

(*c.*) Acceptance supra protest;

(*d.*) Bills in a set.

(4.) Where a foreign note is dishonoured, protest thereof is unnecessary.

PART V

SUPPLEMENTARY

Good faith.

90. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.

Signature.

91.—(1.) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2.) In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal. A.D. 1882.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

Computation of time.

92. Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

"Non-business days" for the purposes of this Act mean—

(*a.*) Sunday, Good Friday, Christmas Day;

(*b.*) A bank holiday under the Bank Holidays Act, 1871, or Acts amending it:

(*c.*) A day appointed by Royal proclamation as a public fast or thanksgiving day.

Any other day is a business day.

When noting equivalent to protest

93. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

Protest when notary not accessible.

94. Where a dishonoured bill or note is authorised or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

The form given in Schedule 1 to this Act may be used with necessary modifications, and if used shall be sufficient.

Dividend warrants may be crossed.

95. The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

Repeal

[96. The enactments mentioned in the Second Schedule to this Act are hereby repealed as from the commencement of this Act to the extent in that schedule mentioned.

Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.]

Savings

97.—(1.) The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques, shall continue to apply thereto notwithstanding anything in this Act contained.

(2.) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

(3.) Nothing in this Act or in any repeal effected thereby shall affect—

(*a.*) [The provisions of the Stamp Act, 1870, or Acts amending it, or] any law or enactment for the time being in force relating to the revenue:

(*b.*) The provisions of the Companies Act, 1862, or Acts amending it, or any Act relating to joint stock banks or companies:

(*c.*) The provisions of any Act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively:

A.D. 1882.

(*d.*) The validity of any usage relating to dividend warrants, or the indorsements thereof.

Saving of summary diligence in Scotland.

98. Nothing in this Act or in any repeal effected thereby shall extend or restrict, or in any way alter or affect the law and practice in Scotland in regard to summary diligence.

Construction with other Acts, &c.

99. Where any Act or document refers to any enactment repealed by this Act, the Act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act.

Parol evidence allowed in certain judicial proceedings in Scotland

100. In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parol evidence: Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenor of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or suspension of a charge, or threatened charge, to make such consignation, or to find such caution as the court or judge before whom the cause is depending may require.

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription.

(By the Statute Law Revision Act, 1898, 61 & 62 Vict. c. 22, the following parts of the Bills of Exchange Act, 1882, were repealed: Section 96, section 97, sub-section (3), sub-clause (*a*), to "it, or," and the Second Schedule.)

SCHEDULES

First Schedule

Section 94.

Form of protest which may be used when the services of a notary cannot be obtained.

Know all men that I, *A.B.* [householder], of in the county of , in the United Kingdom, at the request of *C.D.*, there being no notary public available, did on the day of 188 at demand payment [*or* acceptance] of the bill of exchange hereunder written, from *E.F.*, to which demand he made answer [state answer, if any] wherefore I now, in the presence of *G.H.* and *J.K.* do protest the said bill of exchange.

(Signed) *A.B.*
G.H.
J.K. } Witnesses.

N.B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

SECOND SCHEDULE A.D. 1882.

Enactments Repealed

Session and Chapter	Title of Act and extent of Repeal.
9 Will. 3, c. 17.....	An Act for the better payment of Inland Bills of Exchange.
3 & 4 Anne, c. 8.	An Act for giving like remedy upon Promissory Notes as is now used upon Bills of Exchange, and for the better payment of Inland Bills of Exchange.
17 Geo. 3, c. 30.	An Act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England.
39 & 40 Geo. 3, c. 42.	An Act for the better observance of Good Friday in certain cases therein mentioned.
48 Geo. 3, c. 88.	An Act to restrain the Negotiation of Promissory Notes and Inland Bills of Exchange under a Limited sum in England.
1 & 2 Geo. 4, c. 78. ..	An Act to regulate Acceptances of Bills of Exchange.
7 & 8 Geo. 4, c. 15. ..	An Act for declaring the law in relation to Bills of Exchange and Promissory Notes becoming payable on Good Friday or Christmas Day.
9 Geo. 4, c. 24.	An Act to repeal certain Acts, and consolidate and amend the laws relating to Bills of Exchange and Promissory Notes in Ireland. in part; that is to say, Sections two, four, seven, eight, nine, ten, and eleven.
2 & 3 Will. 4, c. 98. ..	An Act for regulating the protesting for non-payment of Bills of Exchange drawn payable at a place not being the place of the residence of the drawee or drawees of the same.
6 & 7 Will., 4, c. 58. ..	An Act for declaring the law as to the day on which it is requisite to present for payment to Acceptor, or Acceptors suprà protest for honour, or to the Referee or Referees, in case of need, Bills of Exchange which have been dishonoured.
8 & 9 Vict., c. 37..... in part.	An Act to regulate the issue of bank notes in Ireland, and to regulate the repayment of certain sums advanced by the Governor and Company of the Bank of Ireland for the public service, in part; that is to say, Section twenty-four.

A.D. 1882.	Session and Chapter	Title of Act and extent of Repeal
	19 & 20 Vict., c. 97.. in part.	The Mercantile Law Amendment Act, 1856, in part; that is to say, Sections six and seven.
	23 & 24 Vict., c. 111. in part.	An Act for granting to Her Majesty certain duties of stamps, and to amend the laws relating to the stamp duties, in part; that is to say, Section nineteen.
	34 & 35 Vict., c. 74...	An Act to abolish days of grace in the case of Bills of Exchange and Promissory Notes payable at sight or on presentation.
	39 & 40 Vict., c. 81...	The Crossed Cheques Act, 1876.
	41 & 42 Vict., c. 13...	The Bills of Exchange Act, 1878.
	Enactment Repealed as to Scotland	
	19 & 20 Vict., c. 60... in part.	The Mercantile Law (Scotland) Amendment Act, 1856, in part; that is to say, Sections ten, eleven, twelve, thirteen, fourteen, fifteen, and sixteen.

Bills of Exchange (Crossed Cheques) Act, 1906

[6 Edw. 7, C. 17]

An Act to amend section eighty-two of the Bills of Exchange Act, 1882.

[4th August, 1906.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Amendment of 45 & 46 Vict., c. 61, s. 82.

1. A banker receives payment of a crossed cheque for a customer within the meaning of section eighty-two of the Bills of Exchange Act, 1882, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof.

Short title.

2. This Act may be cited as the Bills of Exchange (Crossed Cheques) Act, 1906, and this Act and the Bills of Exchange Act, 1882, may be cited together as the Bills of Exchange Acts, 1882 and 1906.

Bills of Exchange (Time of Noting) Act, 1917

[7 & 8 GEO. 5, c. 48]

A.D. 1917.

An Act to amend the Bills of Exchange Act, 1882, with respect to the time for noting Bills.

[8th November, 1917.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Time of noting. 45 & 46 Vict., c. 61.

1. In subsection (4) of section fifty-one of the Bills of Exchange Act, 1882 (which relates to the time of noting a dishonoured bill), the words " it must be noted on the day of its dishonour " shall be repealed, and the following words shall be substituted therefor, namely, " it may be noted on the day of its dishonour and must be noted not later than the next succeeding business day."

Short title and construction. 6 Edw. VII, c. 17.

2. This Act may be cited as the Bills of Exchange (Time of Noting) Act, 1917, and shall be construed as one with the Bills of Exchange Act, 1882, and the Bills of Exchange Acts, 1882 and 1906, and this Act may be cited together as the Bills of Exchange Acts, 1882 to 1917.

INDEX

ACCEPTANCE, 38
— defined, 38
— form of, 39
— general, 39, 40
— presentment for, 65
— qualified, 41
— requisites of, 38, 39
— supra protest, 109
— time for, 39
Acceptance for honour, 43, 109
— how made, 110
Acceptor, 13, 38
— defences of, 44
— engagements of, 42
— estoppels binding, 42
— for honour, 43, 109
— liability of, 42
— more than one, 38
— must be designated, 38
— must sign, 38
— payment by, 102
— same person as drawee, 38
Accommodation bill, 30
— payment of, 88
Accord and satisfaction, 107, 140
Account of payee, 156
Act of honour, 43
Action at law, 165
— in County Court, 168
— in High Court, 166
— right of, 81
After date, 60
— sight, 60
Agency, 118
Agent, authority of, 22, 118
— kinds of, 22
— remedy against, 25
— signature by, 23
Allonge, 54
Alteration, 89
— material, 96, 105
— of bill, 89, 96
— of cheque, 136
Alternative drawee, 38
— payee, 46
Amount of bill, 18
— of cheque, 127
— in figures, 8
— in words, 18
Ante-dated bill, 16
Assignment, 2
Assignment, compared with negotiability, 2
— of funds in hands of drawee, 42
Assumed name, 27
Authority of parties, 20 *sqq.*
— distinguished from capacity, 20

BANK Note, 5, 162
— stopping, 162
Banker, collecting, 152
— duty as to crossed cheques, 147
— liability for forged indorsements, 133
— liability for forged signatures, 91, 133
— relation of customers to, 143
— revocation of authority of, 140
— right to retain paid cheques, 142
Bankruptcy, rights in, 83
— revocation of authority to pay cheques, 140
Bearer, 18
— bill payable to, 18, 48, 50
— cheque payable to, 127
Better security, protest for, 78
Bills of Exchange, Act, 173 *sqq.*
— accommodation, 30
— alteration of, 89 *sqq.*
— ante-dated, 16
— at sight, 60
— cancellation of, 105
— compared with cheques, 122
— date of, 16
— dealing with, 120
— definition of, 11
— delivery of, 50
— discharge of, 99 *sqq.*
— dishonour of, 71 *sqq.*
— eight points of, 11
— foreign, 14, 113 *sqq.*
— forgery of, 89 *sqq.*
— form of, 11, 15
— history of, 4 *sqq.*
— inland, 14
— issue of, 49
— negotiation of, 50
— on demand, 60
— payable to bearer, 17, 48, 50
— payable to order, 17, 51
— payment by, 106
— place of making, 16

Bills of Exchange, post-dated, 16
— re-issue of, 103
— time for payment of, 17, 60 *sqq.*
— value presumed, 18
Bills in a set, 111
Blank cheque, 138
— signatures and indorsements, 51, 130
Bona Fides, see Good Faith
Burden of proof, 31
Business days, 119

Cancellation of bill, 105
— of cheque, 142
Capacity, 20 *sqq.*
— compared with authority, 20
— of agent, 22
— companies, 22
— corporations, 22
— drunkards, 22
— infants, 20, 21
— lunatics, 22
— married women, 21
— partners, 25
Case of need, 109
Cessation of rights, 84
Cheques,, amending Act as to crossed, 201
— alteration of, 135, 136
— bearer, 127
— blank, 138
— cancellation of, 142
— compared with bills, 122
— crossed, 145 *sqq.*
— date of, 132
— definition of, 122
— form of, 122
— history of, 6
— liability of parties on, 136, 138
— marked, 155
— negotiability of, 6 *sqq.*
— not negotiable, 154
— open, 122 *sqq.*
— order, 127
— part-payment of, 131
— payment by, 142
— post-dated, 132
— presentment for payment, 123, 130
— property in paid, 142
— requirements of, 124 *sqq.*
— stale, 124
— stolen, 135
— stopping payment of, 141
Collecting banker, 152
Companies, capacity of, 22
Computation of time, 119
Conditions, 12
Conflict of laws, 113
Consideration, 28 *sqq.*
— defence of no, 32
— definition of, 28
— good, 28
— illegal, 29, 32
— inadequate, 28
— presumption of, 18
— requisites of, 28
— valuable, 28
Corporations, capacity of, 22
Counterclaim, 168
Countermand of payment of cheque, 140
Crossed cheques, 145 *sqq.*
Crossings, 146
— forms of, 148
— general, 146
— material part of cheques, 147
— special, 146
Customer of Bank, 152

Damages, measure of, 86
Date of bill, 16
— of cheque, 132
— alteration of, 62
— importance of, 60
— insertion of, 16
— not essential, 16
Days of grace, 61
— how to exclude, 62
Dealing with bills, 120
Defect of title, 31
Delivery of bill, 48, 49
Discharge of bill, 99 *sqq.*
— by accord and satisfaction, 107
— by alteration, 106
— by cancellation, 105
— by payment, 100
— by renunciation, 104
Discounter, 30, 59
Discounting a bill, 59
Dishonour, 71 *sqq.*
— form of notice of, 74
— notice of, 71
— notice dispensed with, 76
— rules as to notice of, 72
— time for giving notice of, 75
Dividend warrant may be crossed, 146
Domiciled bill, 66
Donatio mortis causâ, 141
Draft, same as bill, 11
Drawee, 13
— alternative, 38
— becomes acceptor, 38
— more than one, 38
— must be designated, 13
— of cheque, 128

Drawer of bill, 12, 34
— engagements of, 36
— estoppels binding, 36
— liability of, 36
— limiting liability, 37
— signature of, 12, 34
— waiver of notice of dishonour by, 37
— of cheque, 126
—, countermand of payment by, 140
— notice of act of bankruptcy of, 140
—, — — death of, 140
Drunkard, capacity of, 22

EQUITIES, subject to the, 2
Estoppels,
— binding acceptor, 44
— binding drawer, 36
— binding indorser, 56
Exchange, measure of damages on, 86
Ex-partners, liability of, 26
Extrinsic evidence, 19

FAILURE of consideration, 29
Fictitious payee, 47, 128
— of bill, 47
— of cheque, 127
Foreign bill of exchange, 113
— amount of, 116
— compared with inland bill, 113
— due date of, 116
— form of, 112
Forged indorsements, 89 *sqq.*
— on cheques, 133 *sqq.*
— relief of banker for, 133
Forged signature, 89
— claims through or under, 90
Forgery of bill, 89 *sqq.*
— relief in case of, 92
Forms—
— of bills (inland), 15
— of bills (foreign), 112
— of cheques, 122
— of I O U, 163
— of notice of dishonour, 74
— of promissory note, 158
— of protest, 79
Fraud, 31
— signature obtained by, 27
Funds in hands of drawee, assignment of, 42

GAMING, defence as to, 33
Garnishee order, 141
General acceptance, 40
Good faith, 31, 117
— tests as to what is, 117
Grace, days of, 61

HISTORY of bills, 4 *sqq.*
— of cheques, 6 *sqq.*
— of promissory notes, 5
Holder, 29
— for value, 29
— in due course, 30
— rights of, 81
Honour, acceptance for, 109
— payment for, 111

IDENTITY of payee of cheque, 130
Illegality of consideration, 29, 32
Immediate parties, 17
Inchoate instruments, 35, 42, 49, 161
Indemnity in case of lost bill, 82
Indorsee, included in term holder, 28, 29
— rights under conditional indorsement, 55
— rights under restrictive indorsement 55
Indorsement, 14, 50
— blank, 50, 130
— conditional, 55
— conversion of, 52
— forged, 89, 90, 133
— liability by, 56
— order of, 56
— origin of, 4
— partial, 53
requisites of, 53
restrictive, 55
— special, 51, 130
— striking out, 55
— transfer without, 54
— when wrong name, 45
Indorser, 53
— capacity of, 58
— engagements of, 56
— estoppels binding, 56, 57
— liability of, 56
Infants, authority of, 20, 21
— banking account of, 126
— capacity of, 20
— indorsement by, 21
Initials, as signature, 119
Injunction to restrain negotiation, 169
Inland bill, 14
— compared with foreign bill, 113
Insane persons, capacity of, 22, 63
Instalments, payment by, 14
Interest, claim for, 87
I O U, 10, 163

I O U, form of, 163
— no stamp required, 164
— value of, 163
Issue of bill, 49

Joint promissory note, 160
— and several promissory note, 160

Law merchant, 3
Legal tender, 13 n.
Liability, 81 *sqq.*, 136
— limitation of, 37
— of acceptor, 42
— of drawer, 35
— of indorser, 56
— on cheques, 138
— on consideration, 69
Lien, 30, 59
Limitations, Statute of, 63
Lithographed signature, 34
Lost bill, 80, 82
— indemnity for, 82
Lunatic, capacity of, 22

Maker of promissory note, 157, 158
— contract of, 159
— in same position as acceptor of bill, 157
— signature of, 158
Mark, sufficiency as signature, 119
Marked cheques, 155
Married women, 21
— capacity of, 21
Material alteration, 96, 105
Measure of damages, 86
Minor, banking account of, 126
Misdescription, 45
Mistake, payment of cheque by, 144
Money, payment in, 13, 14
Month, 62

Need, referee in case of, 109
Negligence, estoppel by, 93, 97, 135
Negotiability, 2
— compared with assignment, 2
— history of, 3
Negotiable instruments, 1, 3
— characteristics of, 1
Negotiation of bill, 50 *sqq.*
— length of time of, 58
Negotiation back, 58
Non-business days, 119
Non-existing person, 47, 128
Notice of dishonour, 71 *sqq.*
— dispensed with, 76
— rules as to, 72
— time for giving, 75
Noting a bill, 78
Not negotiable, 154

Order, 11
— bill payable to, 17, 51
— conditional, 12
— negotiation of bill payable to, 51
— unconditional, 12

Paid cheques, property in, 142
Part payment of bill, 103
— payment of cheque, 131
Particular fund, 125
Parties, 17, 138, 158
— capacity of, 20 *sqq.*
— immediate 17
— liability of, 138, 139
— remote, 17
Partners, capacity of, 25, 137
Payee, 14, 45, 127
— of bill, 14
— — alternative, 46
— — capacity of, 46
— — fictitious, 47
— — incorrectly named, 45
— — liability of, 48
— — must be designated, 45
— — same as drawer, 14, 48
— of cheque, 127
— — fictitious, 128
Payment—
— by bill, 106
— by cheque, 142
— for honour, 111
— in due course, 100
— in money, 14
— of bill, 100 *sqq.*
— place of, 17
— presentment for, 67
— stopping, 139
— time of, 13, 17, 60 *sqq.*
Pencil signature, 119
Per Proc. signature, 24
— notice by, 24
Person, definition of, 13
Pledge of bill, 59
Post-dated bill, 16
— cheque, 132
Post office, agency of, 142
Presentment of bill, 65 *sqq.*
— for acceptance, 65
— — rules for, 66
— — time for, 66
— for payment, 67
— — rules for, 68
— — time for, 68
— necessity of, 69
— of cheque, 123, 130

Presentment of promissory note, 159
Presumption of consideration, 18
— when rebuttable, 18
Principal and surety, 87
Procuration signature, 24, 25
Promissory note, 5, 157
— amount of, 158
— definition of, 157
— form of, 158
Promissory note, history of, 4, 5
— joint, 160
— joint and several, 160
— maker of, 158
— payable on demand, 159
— stamp on, 158, 171
Protest of bill, 78
— dispensing with, 80
— place of, 79
— requisites of, 79
— stamping of, 80

RATIFICATION of unauthorised signature, 89
Receipt on bill, 104
Recourse, without, 23, 37
Referee in case of need, 109
Re-issue of bank notes, 161
— of bill, 103
Remote parties, 17, 76
Renewal of bill, 107
Renunciation of bill, 104
Restraining dealings with bills, 169
Restrictive indorsement, 55
Revocation of authority of banker, 140
Rights, cessation of, 84
— transmission of, 83
Rights of parties, 81 *sqq.*

Sans Recours, 37
Scotland, assignment of funds in hands of drawee in, 42
Seal, sufficiency as signature, 119
Set, bills in a, 111
Set-off, 168
Sight, bill at, 60
Signature, 119
Signature by agent, 23
— forged, 89
— how made, 34, 119
— obtained by fraud, 27
— of customer, 132
— per pro., 24
— unauthorised, 89, 94
Special indorsement, 51, 129
Stale cheque, 124
Stamps, 170
Statute of Limitations, 63
Stolen cheques, 135, 150
Stopping a cheque, 141
— bank notes, 161
Subject to the equities, 2
Suprà protest, 109

"THROUGH or under," 90
Time for giving notice of dishonour, 75
— of payment, 13, 17, 60 *sqq.*
— — computation of, 119
Transfer, 49 *sqq.*
— without indorsement, 54
Transmission of rights, 83
Treasury Notes, 162

Ultra Vires, 22
Unauthorised signature, 89, 94
Unconditional order, 12
Unstamped Documents, 172
Usances, 113

"VALUE received," 18
— unnecessary to add, 18

WARRANTY on transfer without indorsement, 54
Without days of grace, 62
— grace, 62
— recourse, 23, 37
Writing, necessity of, 12
Wrong name, 45

THE END

Printed by Sir Isaac Pitman & Sons, Ltd., Bath, England
V—(5375)

PITMAN'S
BUSINESS HANDBOOKS

AN ABRIDGED LIST OF PRACTICAL GUIDES FOR :: BUSINESS MEN AND ADVANCED STUDENTS ::

COMPLETE LIST OF COMMERCIAL BOOKS POST FREE ON APPLICATION

BOOK-KEEPING AND ACCOUNTS

ADVANCED ACCOUNTS. A Manual of Advanced Book-keeping and Accountancy for Accountants, Book-keepers, and Business Men. Edited by ROGER N. CARTER, M.Com., F.C.A., *Lecturer on Accounting at the University of Manchester.* In demy 8vo, cloth gilt, 988 pp. **7s. 6d.** net.

AUDITING, ACCOUNTING, AND BANKING. By FRANK DOWLER, A.C.A.; and E. MARDINOR HARRIS, *Associate of the Institute of Bankers.* In demy 8vo, cloth gilt, 328 pp. **7s. 6d.** net.

THE PRINCIPLES OF AUDITING. A Practical Manual for Advanced Students and Practitioners. By F. R. M. DE PAULA (*of the firm of De Paula, Turner, Lake & Co.*), F.C.A. In demy 8vo, cloth gilt, 224 pp. **7s. 6d.** net.

ACCOUNTANCY. By F. W. PIXLEY, F.C.A., *Barrister-at-Law, Ex-President of the Institute of Chartered Accountants.* In demy 8vo, cloth gilt, 318 pp. **7s. 6d.** net.

AUDITORS: THEIR DUTIES AND RESPONSIBILITIES. By the same Author. Eleventh Edition. In demy 8vo, cloth gilt, 732 pp. **21s.** net.

COST ACCOUNTS in Principle and Practice. By A. CLIFFORD RIDGWAY, F.C.A. In demy 8vo, cloth gilt, with 40 specially prepared forms. **5s.** net.

THEORY AND PRACTICE OF COSTING. By E. W. NEWMAN, A.C.A. In demy 8vo, cloth gilt, 203 pp. **10s. 6d.** net.

COMPANY ACCOUNTS. By ARTHUR COLES, F.C.I.S. With a Preface by CHARLES COMINS, F.C.A. In demy 8vo, cloth gilt, 356 pp. **7s. 6d.** net.

DICTIONARY OF BOOK-KEEPING. By R. J. PORTERS. In demy 8vo, 780 pp. **7s. 6d.** net.

MANUFACTURING BOOK-KEEPING AND COSTS. By GEORGE JOHNSON, F.C.I.S. In demy 8vo, cloth gilt, 120 pp. **5s.** net.

THE ACCOUNTANT'S DICTIONARY. Edited by F. W. PIXLEY, F.C.A., *Barrister-at-Law.* Assisted by about 30 specialist contributors. This important work places at the disposal of the practitioner a great store of information on all phases of accountancy, arranged in the most convenient form. In two vols., crown 4to, cloth gilt, about 1000 pp. **£3 3s.** net.

MANUAL OF BOOK-KEEPING AND ACCOUNTANCY. By A. NIXON, F.C.A., F.C.I.S., and H. E. EVANS, A.C.A. In demy 8vo, cloth gilt, 330 pp. **10s. 6d.** net.

THE ACCOUNTS OF EXECUTORS, ADMINISTRATORS, AND TRUSTEES. With a Summary of the Law in so far as it relates to Accounts. By WILLIAM B. PHILLIPS, A.C.A. (Hons. Inter. and Final), A.C.I.S. Fourth Edition, Revised. In demy 8vo, cloth gilt, 150 pp. **5s.** net.

PRACTICAL BOOK-KEEPING. By GEO. JOHNSON, F.C.I.S. In crown 8vo, cloth, 420 pp. **6s.** net.

RAILWAY ACCOUNTS AND FINANCE. Railway Companies (Accounts and Returns) Act, 1911. By ALLEN E. NEWHOOK, A.K.C. In demy 8vo, cloth gilt, 148 pp. **5s.** net.

DEPRECIATION AND WASTING ASSETS, and their treatment in computing annual profit and loss. By P. D. LEAKE, F.C.A. In demy 8vo, cloth gilt, 257 pp. **15s.** net.

COMMERCIAL GOODWILL. Its History, Value, and Treatment in Accounts. By the same Author. In demy 8vo, cloth gilt, 260 pp. **21s.** net.

SINKING FUNDS, RESERVE FUNDS, AND DEPRECIATION. By J H. BURTON, A.S.A.A. In demy 8vo, cloth, 99 pp. **3s. 6d.** net

ACCOUNTING. By S. S. DAWSON, F.C.A ; and R. C. DE ZOUCHE, F.C.A. In demy 8vo, cloth gilt, 290 pp. **10s. 6d.** net.

MANUAL OF COST ACCOUNTS. By JULIUS LUNT, A.C.A. (Hons). In demy 8vo, cloth gilt, 204 pp. **7s. 6d.** net.

MUNICIPAL BOOK-KEEPING. By J. H. MCCALL, F.S.A.A. In demy 8vo, cloth gilt, 122 pp. **7s. 6d.** net.

BRANCH ACCOUNTS. By P. TAGGART, A.S.A.A. In demy 8vo, 87 pp. **3s.** net.

BUSINESS TRAINING

LECTURES ON BRITISH COMMERCE, including Finance, Insurance, Business, and Industry. With a Preface by the HON. W. PEMBER REEVES. In demy 8vo, cloth gilt, 295 pp **7s. 6d.** net.

THE THEORY AND PRACTICE OF COMMERCE. Being a Complete Guide to Methods and Machinery of Business. Edited by F. HEFLIS, F.C.I.S., assisted by Specialist Contributors. In demy 8vo, cloth gilt, 620 pp., with many facsimile forms. **7s. 6d.** net.

THE PRINCIPLES AND PRACTICE OF COMMERCE. By JAMES STEPHENSON, M.A., M.Com., B.Sc. In demy 8vo, cloth gilt, 650 pp., with many facsimile forms. **8s. 6d.** net.

THE PRINCIPLES AND PRACTICE OF COMMERCIAL CORRESPONDENCE. By the same Author. In demy 8vo, 320 pp. **7s. 6d.** net.

THE PRINCIPLES OF COMMERCIAL HISTORY. By the same Author. In demy 8vo, 279 pp. **7s. 6d.** net.

THE PRINCIPLES AND PRACTICE OF COMMERCIAL ARITHMETIC. By P. W. NORRIS, M.A., B.Sc. (Hons.) In demy 8vo, 452 pp. **7s. 6d.** net.

MODERN BUSINESS AND ITS METHODS. A Manual of Business Organization, Management, and Office Procedure for Commercial Students and Business Men. By W. CAMPBELL, *Chartered Secretary*. In crown 8vo, cloth, 493 pp. **7s. 6d.** net. Also in 2 vols., each **3s. 6d.** net.

INSURANCE

INSURANCE. A Practical Exposition for the Student and Business Man. By T. E. YOUNG, B.A., F.R.A.S. With a Practical Section on Workmen's Compensation Insurance, by W. R. STRONG, F.I.A.; and the National Insurance Scheme, by VYVYAN MARR, F.F.A., F.I.A. Third Edition, Revised and Enlarged. In demy 8vo, cloth gilt, 440 pp. **10s. 6d.** net.

INSURANCE OFFICE ORGANIZATION, MANAGEMENT, AND ACCOUNTS. By T. E. YOUNG, B.A., F.R.A.S.; and RICHARD MASTERS, A.C.A. Second Edition, Revised. In demy 8vo, cloth gilt, 150 pp. **6s.** net.

THE ELEMENTS OF ACTUARIAL SCIENCE. By R. E. UNDERWOOD, M.B.E., F.I.A. In crown 8vo, cloth, 148 pp. **5s.** net.

THE COMMON HAZARDS OF FIRE INSURANCE. By W. G. KUBLER RIDLEY, F.C.I.I. In demy 8vo, cloth gilt, 92 pp. **5s.** net.

THE LAW AND PRACTICE AS TO FIDELITY GUARANTEES. By C. EVANS, *Barrister-at-Law*; and F. H. JONES. In demy 8vo, cloth gilt, 172 pp **6s.** net.

WORKMEN'S COMPENSATION INSURANCE. By C E GOLDING, LL.B., F C.I.I. In demy 8vo, cloth gilt, 112 pp **5s.** net.

MOTOR INSURANCE. By W. F. TODD In demy 8vo, cloth gilt, 176 pp. **6s.** net.

GUIDE TO MARINE INSURANCE. By H. KEATE. In crown 8vo, cloth, 203 pp **3s. 6d.** net.

GUIDE TO LIFE ASSURANCE. By S. G LEIGH, *Fellow of the Institute of Actuaries*. A Handbook of the Practical and Scientific Aspects of the Business In crown 8vo, cloth, 192 pp. **5s.** net.

TALKS ON INSURANCE LAW. By Jos. A. WATSON, B.Sc., LL.B. In crown 8vo, cloth, 140 pp. **5s.** net.

PENSION, ENDOWMENT, LIFE ASSURANCE, AND OTHER SCHEMES FOR COMMERCIAL COMPANIES. By HAROLD DOUGHARTY, F.C.I.S. In demy 8vo, cloth gilt, 103 pp. **6s.** net.

THE SUCCESSFUL INSURANCE AGENT. By J. J. BISGOOD, B.A In crown 8vo, cloth, 135 pp. **2s. 6d.** net.

ORGANIZATION AND MANAGEMENT

OFFICE ORGANIZATION AND MANAGEMENT. Including Secretarial Work. By LAWRENCE R. DICKSEE, M.Com., F.C.A.; and H. E. BLAIN, C.B.E., *Assistant Managing Director of the Underground Railways of London*. Fourth Edition, Revised. In demy 8vo, cloth gilt, 314 pp. **7s. 6d.** net.

COUNTING HOUSE AND FACTORY ORGANIZATION. A Practical Manual of Modern Methods applied to the Counting House and Factory. By J. GILMOUR WILLIAMSON. In demy 8vo, cloth gilt, 182 pp. **7s. 6d.** net.

FILING SYSTEMS. Their Principles and their Application to Modern Office Requirements. By EDWARD A. COPE. In crown 8vo, cloth gilt, 200 pp., with illustrations. **3s. 6d.** net.

INDUSTRIAL TRAFFIC MANAGEMENT. By GEO. B. LISSENDEN, *Author of "Railway (Rebates) Case Law," etc., etc.* With a Foreword by LORD LEVERHULME. Second Edition, Revised and Enlarged. In demy 8vo, cloth gilt, 352 pp. **21s.** net.

HOW TO SEND GOODS BY ROAD, RAIL, AND SEA. By the same Author. In crown 8vo, cloth, 92 pp. **2s.** net.

MOTOR ROAD TRANSPORT FOR COMMERCIAL PURPOSES. By JOHN PHILLIMORE. With an Introduction by SIR H. P. MAYBURY, K.C.M.G., C.B. In demy 8vo, cloth gilt, 216 pp. **12s. 6d.** net.

CLUBS AND THEIR MANAGEMENT. By FRANCIS W. PIXLEY, F.C.A., *Barrister-at-Law.* In demy 8vo, cloth gilt, 240 pp. **7s. 6d.** net.

SOLICITOR'S OFFICE ORGANIZATION, MANAGEMENT, AND ACCOUNTS. By E. A. COPE and H. W. H. ROBINS. In demy 8vo, cloth gilt, 176 pp., with numerous forms. **6s.** net.

COLLIERY OFFICE ORGANIZATION AND ACCOUNTS. By J. W. INNES, F.C.A.; and T. COLIN CAMPBELL, F.C.I. In demy 8vo. **7s. 6d.** net.

DRAPERY BUSINESS ORGANIZATION AND MANAGEMENT. By J. ERNEST BAYLEY. In demy 8vo, cloth gilt, 300 pp. **7s. 6d.** net.

GROCERY BUSINESS ORGANIZATION AND MANAGEMENT. By C. L T. BEECHING. With Chapters on Buying a Business, Grocers' Office Work and Book-keeping, etc., by J. A. SMART. Second Edition. In demy 8vo, cloth, 183 pp. **6s.** net.

THE HISTORY, LAW, AND PRACTICE OF THE STOCK EXCHANGE. By A. P. POLEY, B.A., *Barrister-at-Law*; and F. H. CARRUTHERS GOULD. Third Edition, Revised. In demy 8vo, cloth gilt, 348 pp. **7s. 6d.** net.

INDUSTRIAL ADMINISTRATION

THE PSYCHOLOGY OF MANAGEMENT. By L. M. GILBRETH. In demy 8vo, 354 pp. **7s. 6d.** net.

EMPLOYMENT MANAGEMENT. Compiled and edited by DANIEL BLOOMFIELD. In demy 8vo, 507 pp. **8s. 6d.** net.

PROBLEMS OF LABOUR. Compiled and Edited by DANIEL BLOOMFIELD. In demy 8vo, cloth gilt, 434 pp. **8s. 6d.** net.

MODERN INDUSTRIAL MOVEMENTS. Compiled and Edited by DANIEL BLOOMFIELD. In demy 8vo, cloth gilt, 380 pp. **10s. 6d.** net.

COMMON SENSE AND LABOUR. By SAMUEL CROWTHER. In demy 8vo, cloth gilt, 290 pp. **8s. 6d.** net.

CURRENT SOCIAL AND INDUSTRIAL FORCES. Edited by LIONEL D. EDIE. In demy 8vo, cloth gilt, 393 pp. **12s. 6d.** net.

LECTURES ON INDUSTRIAL ADMINISTRATION. Edited by B. MUSCIO, M.A. In crown 8vo, cloth, 276 pp. **6s.** net.

OUTLINES OF INDUSTRIAL ADMINISTRATION. By R. O. HERFORD, H. T. HILDAGE, and H. G. JENKINS. In demy 8vo, cloth gilt, 124 pp. **6s.** net.

INDUSTRIAL CONTROL. By F. M. LAWSON. In demy 8vo, cloth gilt, 130 pp. **8s. 6d.** net.

FACTORY ADMINISTRATION IN PRACTICE. By W. J. Hiscox. In demy 8vo, cloth gilt. **8s. 6d.** net.

MANAGEMENT. By J. Lee, M.A., M.Com.Sc. In demy 8vo, cloth gilt, 133 pp. **5s.** net.

WORKSHOP COMMITTEES. By C. G. Renold. Reprinted from the Report of the British Association Sub-Committee on Industrial Unrest. In demy 8vo, 52 pp. **1s.** net.

RESEARCH IN INDUSTRY. By A. P. M. Fleming, C.B.E., M.Sc., M I.E.E.; and J. G. Pearce, B.Sc., A.M.I.E.E. In demy 8vo, cloth gilt, 264 pp. **10s. 6d.** net.

INTRODUCTION TO THE PRINCIPLES OF INDUSTRIAL ADMINISTRATION. By A. P. M. Fleming and H. J. Brocklehurst, M.Eng., A M.I.E.E. In demy 8vo, 140 pp. **3s. 6d.** net.

SHARING PROFITS WITH EMPLOYEES. By J. A. Bowie, M.A. In demy 8vo, cloth gilt, 230 pp. **10s. 6d.** net.

PATENTS FOR INVENTIONS. By J. Ewart Walker, B.A., *Barrister-at-Law*; and R. Bruce Foster, B Sc., *Barrister-at-Law*. In demy 8vo, cloth gilt, 400 pp, **21s.** net.

SHIPPING

SHIPPING OFFICE ORGANIZATION, MANAGEMENT, AND ACCOUNTS. A comprehensive Guide to the innumerable details connected with the Shipping Trade. By Alfred Calvert. In demy 8vo, cloth gilt, 203 pp., with numerous forms. **6s.** net.

THE EXPORTER'S HANDBOOK AND GLOSSARY. By F. M. Dudeney. In demy 8vo, cloth gilt, 254 pp. **8s. 6d.** net.

HOW TO EXPORT GOODS. By F. M. Dudeney. In crown 8vo, cloth, 112 pp. **2s.** net.

HOW TO IMPORT GOODS. By J. A. Dunnage. In crown 8vo, cloth, 128 pp. **2s.** net.

IMPORT AND EXPORT TRADE. By A. S. Harvey, *Officer of H.M. Customs and Excise*. In demy 8vo, cloth gilt, 518 pp. **21s.** net.

EXPORTING TO THE WORLD. By A. A. Preciado. A Manual of practical export information. In demy 8vo, cloth gilt, 447 pp **21s.** net.

CASE AND FREIGHT COSTS. The Principles of Calculation relating to the Cost of, and Freight on, Sea or Commercial Cases. By A. W. E. Crosfield. In crown 8vo, cloth, 62 pp. **2s.** net.

CONSULAR REQUIREMENTS FOR EXPORTERS AND SHIPPERS TO ALL PARTS OF THE WORLD. By J S Nowery Second Edition, Revised and Enlarged. Including exact copies of all forms of Consular Invoices, etc. In demy 8vo, cloth **7s. 6d.** net.

INTRODUCTION TO SHIPBROKING. By C. D. MacMurray and M. M. Cree. In demy 8vo, cloth, 166 pp. **3s. 6d.** net.

SHIPPING BUSINESS METHODS. By R. B. Paul. In demy 8vo, cloth gilt, 104 pp. **3s. 6d.** net.

BANKING AND FINANCE

MONEY, EXCHANGE, AND BANKING, in their Practical, Theoretical, and Legal Aspects. A complete Manual for Bank Officials, Business Men, and Students of Commerce. By H. T. EASTON, *Associate of the Institute of Bankers.* Second Edition. In demy 8vo, cloth gilt, 312 pp. **6s.** net.

ENGLISH PUBLIC FINANCE. From the Revolution of 1688. With Chapters on the Bank of England. By HARVEY E. FISK. In demy 8vo, cloth gilt, 207 pp. **7s. 6d.** net.

FOREIGN EXCHANGE AND FOREIGN BILLS IN THEORY AND IN PRACTICE. By W. F. SPALDING, *Certificated Associate, Institute of Bankers.* Fourth Edition. In demy 8vo, cloth gilt, 261 pp. **7s. 6d.** net.

EASTERN EXCHANGE, CURRENCY, AND FINANCE. By the same Author. Third Edition. In demy 8vo, cloth, 375 pp., illustrated. **15s.** net.

FOREIGN EXCHANGE, A PRIMER OF. By the same Author. In crown 8vo, cloth, 108 pp. **3s. 6d.** net.

BANKERS' CREDITS AND ALL THAT APPERTAINS TO THEM IN THEIR PRACTICAL, LEGAL AND EVERYDAY ASPECTS. By the same Author. In demy 8vo, cloth gilt, 126 pp. **10s. 6d.** net.

THE FUNCTIONS OF MONEY. By the same Author. With a Foreword by G. ARMITAGE SMITH, D.Lit., M.A. In demy 8vo, cloth gilt, 179 pp. **7s. 6d.** net.

THE LONDON MONEY MARKET. By the same Author. A practical guide to what it is, where it is, and the operations conducted in it. In demy 8vo, cloth gilt, 232 pp. **10s. 6d.** net.

PRACTICAL BANKING. By J. F. G. BAGSHAW, *Certificated Associate of the Institute of Bankers.* With chapters on **"The Principles of Currency,"** by C. F. HANNAFORD, *Associate of the Institute of Bankers*; and **"Bank Book-keeping,"** by W. H. PEARD, *Member of the Institute of Bankers in Ireland.* In demy 8vo, cloth gilt, 397 pp. **7s. 6d.** net.

BANK ORGANIZATION, MANAGEMENT, AND ACCOUNTS. By J. F. DAVIS, D.Lit., M.A., LL.B. In demy 8vo, cloth gilt, 165 pp. **6s.** net.

BILLS, CHEQUES, AND NOTES. A Handbook for Business Men and Lawyers. By J. A. SLATER, B.A., L.L.B. (Lond.). Third Edition. In demy 8vo, cloth gilt, 214 pp. **6s.** net.

THE BANKERS' CLEARING HOUSE. What it is and what it does. By P. W. MATTHEWS. In demy 8vo, cloth gilt, 168 pp. **7s. 6d.** net.

BANKERS' SECURITIES AGAINST ADVANCES. By LAWRENCE A. FOGG, *Certificated Associate of the Institute of Bankers.* In demy 8vo, cloth gilt, 120 pp. **6s.** net.

BANKERS' ADVANCES. By F. R. STEAD. Edited by SIR JOHN PAGET, K.C. In demy 8vo, cloth, 144 pp. **6s.** net.

BANKERS' ADVANCES AGAINST PRODUCE. By A. WILLIAMS. In demy 8vo, cloth gilt, 147 pp. **6s.** net.

SIMPLE INTEREST TABLES. By SIR WM. SCHOOLING, K.B.E. In crown 8vo, cloth gilt, 188 pp. **21s.** net.

DICTIONARY OF BANKING. A Complete Encyclopaedia of Banking Law and Practice. By W. THOMSON, *Bank Inspector*. Fourth Edition, Revised and Enlarged. In crown 4to, half-leather gilt, 691 pp. **30s.** net.

BRITISH FINANCE. See p. 8.

TITLE DEEDS AND THE RUDIMENTS OF REAL PROPERTY LAW. By F. R. STEAD. Third Edition. In demy 8vo, cloth, 151 pp. **6s.** net.

SECRETARIAL WORK

THE COMPANY SECRETARY'S VADE MECUM. Edited by PHILIP TOVEY, F.C.I.S. Third Edition, Revised and Enlarged. In foolscap 8vo, cloth. **3s. 6d.** net.

SECRETARY'S HANDBOOK. A Practical Guide to the Work and Duties in connection with the Position of Secretary to a Member of Parliament, a Country Gentleman with a landed estate, a Charitable Institution; with a section devoted to the work of a Lady Secretary, and a chapter dealing with Secretarial work in general. Edited by H. E. BLAIN, C.B.E. In demy 8vo, cloth gilt, 168 pp. **6s.** net.

GUIDE FOR THE COMPANY SECRETARY. A Practical Manual and Work of Reference for the Company Secretary. By ARTHUR COLES, F.C.I.S. Second Edition, Enlarged and thoroughly Revised. With 76 facsimile forms, and the full text of the Companies Acts, 1908 and 1913; the Companies Clauses Act, 1845, Companies (Foreign Interest) Act, 1917; Companies (Particulars as to Directors) Act, 1917; and War Legislation. In demy 8vo, cloth gilt, 432 pp. **6s.** net.

DICTIONARY OF SECRETARIAL LAW AND PRACTICE. A Comprehensive Encyclopaedia of Information and Direction on all matters connected with the work of a Company Secretary. Fully illustrated with the necessary forms and documents. With Sections on special branches of Secretarial Work. Edited by PHILIP TOVEY, F.C.I.S. With contributions by nearly 40 eminent authorities on Company Law and Secretarial Practice, including: The Rt. Hon. G. N. Barnes, M.P.; F. Gore-Browne, K.C., M.A.; A. Crew, F.C.I.S.; J. P. Earnshaw, F.C.I.S.; M Webster Jenkinson, F.C.A.; F. W. Pixley, F.C.A. Third Edition, Enlarged and Revised. In one volume, cloth gilt, 1011 pp. **42s.** net.

DEBENTURES. A Handbook for Limited Company Officials, Investors, and Business Men. By F. SHEWELL COOPER, M.A., *of the Inner Temple, Barrister-at-Law*. In demy 8vo, cloth gilt, 149 pp. **6s.** net.

THE TRANSFER OF STOCKS, SHARES, AND OTHER MARKETABLE SECURITIES. A Manual of the Law and Practice. By F. D. HEAD, B.A. (Oxon), *Barrister-at-Law*. Third Edition, Revised and Enlarged. In demy 8vo, cloth gilt, 220 pp. **10s. 6d.** net.

THE CHAIRMAN'S MANUAL. Being a Guide to the Management of Meetings in general, and of Meetings of Local Authorities; with separate and complete treatment of the Meetings of Public Companies. By GURDON PALIN, *Barrister-at-Law;* and ERNEST MARTIN, F.C.I.S. In crown 8vo, cloth gilt, 192 pp. **5s.** net.

HOW TO TAKE MINUTES. Edited by ERNEST MARTIN, F.C.I.S. Second Edition, Revised and Enlarged. In demy 8vo, cloth gilt, 130 pp. **2s. 6d.** net.

WHAT IS THE VALUE OF A SHARE? Tables for readily and correctly ascertaining (1) the present value of shares; and (2) what dividends should be paid annually to justify the purchase or market price of shares. By D. W. ROSSITER. In demy 8vo, limp cloth, 20 pp. **2s. 6d.** net.

PROSPECTUSES: HOW TO READ AND UNDERSTAND THEM. By PHILIP TOVEY, F.C.I.S. In demy 8vo, cloth, 109 pp. **5s.** net.

PRACTICAL SHARE TRANSFER WORK. By F. W. LIDINGTON A Handbook for the use of Company Clerks. In crown 8vo, 123 pp. **3s. 6d.** net.

QUESTIONS AND ANSWERS ON SECRETARIAL PRACTICE. By E. J. HAMMOND, A.C.I.S., A.L.A.A. In demy 8vo, cloth gilt, 250 pp. **7s. 6d.** net.

INCOME TAX

INCOME TAX AND SUPER-TAX PRACTICE. Incorporating the Consolidation Act of 1918 and the Finance Acts, 1919 and 1920. Fourth Edition. By W. E. SNELLING. In demy 8vo, cloth gilt. **12s. 6d.** net.

TAXATION ANNUAL. Deals with Income Tax and Super-tax; Estate, Legacy, and Succession Duties; Customs and Excise Duties; Stamp Duties, etc. By W. E. SNELLING. In demy 8vo, cloth gilt. **10s. 6d.** net.

SUPER-TAX TABLES. By G. O. PARSONS. 16 pp. **1s.** net.

THE "ABACUS" INCOME TAX TABLES. By E. J. HAMMOND, A.L.A.A. **2s.** net.

CORPORATION PROFITS TAX EXPLAINED AND ILLUSTRATED. By P. D. LEAKE, F.C.A. In crown 8vo. **1s.** net.

ECONOMICS

ECONOMIC GEOGRAPHY. By J. MCFARLANE, M.A., M.Com. In demy 8vo, cloth gilt, 568 pp., with 18 illustrations. **10s. 6d.** net.

THE PRINCIPLES OF ECONOMIC GEOGRAPHY. By R. N. RUDMOSE BROWN, D.Sc., *Lecturer in Geography in the University of Sheffield.* In demy 8vo, cloth gilt, 223 pp. **10s. 6d.** net.

OUTLINES OF THE ECONOMIC HISTORY OF ENGLAND. A Study in Social Development. By H. O. MEREDITH, M.A., M.Com., *Fellow of King's College, Cambridge.* In demy 8vo, cloth gilt, 376 pp. **7s. 6d.** net.

THE HISTORY AND ECONOMICS OF TRANSPORT. By ADAM W. KIRKALDY, M.A., B.Litt. (Oxford), M.Com. (Birmingham); and ALFRED DUDLEY EVANS. Second Edition. In demy 8vo, cloth gilt, 364 pp. **15s.** net.

BRITISH FINANCE DURING AND AFTER THE WAR, 1914-1921. The results of investigations and materials collected by a Committee of the British Association, co-ordinated and brought up to date by A. H. GIBSON, and edited by A. W. KIRKALDY, M.A., B.Litt. In demy 8vo, cloth gilt, 479 pp. **15s.** net.

BRITISH LABOUR. Replacement and Conciliation, 1914-1921. Edited by ADAM W. KIRKALDY, M.A., B.Litt., M.Com. Deals with the results of inquiries arranged by the Section of Economic Science and Statistics of the British Association. In demy 8vo, cloth gilt. **10s. 6d.** net.

PLAIN ECONOMICS. An Examination of the Essential Issues. By G. LEE, M.A., M Com.Sc. In crown 8vo, cloth gilt, 110 pp. **3s. 6d.** net.

LABOUR, CAPITAL, AND FINANCE. By "Spectator" (WALTER W. WALL, F.J.I.) Essays on the Social, Economic, and Financial Problems of the Day. In crown 8vo, cloth, 127 pp. **3s. 6d.** net.

RECONSTRUCTION AND FOREIGN TRADE. By E. T. WILLIAMS, M.I E E. In demy 8vo, 52 pp. **2s.** net.

ADVERTISING AND SALESMANSHIP

THE CRAFT OF SILENT SALESMANSHIP. A Guide to Advertisement Construction. By C. MAXWELL TREGURTHA and J. W. FRINGS. Size, 6¼ in. by 9¼ in., cloth, 98 pp., with illustrations. **5s.** net.

THE NEW BUSINESS. A Handbook dealing with the Principles of Advertising, Selling, and Marketing. By HARRY TIPPER, *President Advertising Men's League, New York.* In demy 8vo, cloth gilt, 406 pp. **8s. 6d.** net.

SALESMANSHIP. By W. A CORBION and G. E. GRIMSDALE. In crown 8vo, cloth, 186 pp. **3s. 6d.** net.

PRACTICAL SALESMANSHIP. By N. C. FOWLER, Junr. In crown 8vo, 337 pp. **7s. 6d.** net.

COMMERCIAL TRAVELLING. By ALBERT E. BULL. In crown 8vo, cloth gilt, 174 pp. **3s. 6d.** net.

THE BUSINESS MAN'S GUIDE TO ADVERTISING. By the same Author. In crown 8vo cloth, 127 pp. **3s. 6d.** net.

THE PSYCHOLOGY OF ADVERTISING IN THEORY AND PRACTICE. By W DILL SCOTT, Ph.D. **12s. 6d.** net.

ADVERTISING AS A BUSINESS FORCE. By P. T. CHERINGTON. In demy 8vo, cloth, 586 pp. **10s. 6d.** net.

THE MANUAL OF SUCCESSFUL STOREKEEPING. By W. A. HOTCHKIN. In demy 8vo, 298 pp. **8s. 6d.** net.

A SHORT COURSE IN ADVERTISING. By ALEX. F. OSBORN. In demy 8vo, cloth gilt, 261 pp. **12s. 6d.** net.

MAKING ADVERTISEMENTS AND MAKING THEM PAY. By ROY S. DURSTINE. In demy 8vo, cloth gilt, 284 pp. **12s. 6d.** net.

THE PRINCIPLES OF PRACTICAL PUBLICITY. By TRUMAN A. DE WEESE. In large crown 8vo, cloth, 266 pp., with 43 illustrations. **10s. 6d.** net.

CONDUCTING A MAIL ORDER BUSINESS. By A. E. BULL. In crown 8vo, cloth, 106 pp. **2s.** net.

MAIL ORDER ORGANIZATION. By P. E. WILSON. In crown 8vo, cloth gilt, 127 pp. **3s. 6d.** net.

BUYING GOODS. By the same Author. In crown 8vo, cloth, 103 pp. **2s.** net.

ADS. AND SALES. By HERBERT N. CASSON. In demy 8vo, cloth, 167 pp. **8s. 6d.** net.

MODERN PUBLICITY. By A. W. DEAN. In crown 8vo, cloth, 70 pp. **2s. 6d.** net.

EFFICIENT SALESMANSHIP. By F. W. SHRUBSALL. In crown 8vo, cloth, 126 pp. **2s.** net.

MODERN METHODS IN SELLING. By L. J. HOENIG. 310 pp. **10s. 6d.** net.

PRACTICAL PRESS PUBLICITY. By A. L. CULYER. In demy 8vo, cloth, 95 pp. **3s. 6d.** net.

WINDOW DRESSING. By G. L. TIMMINS. In crown 8vo, cloth, 85 pp. **2s.** net.

LAW

MERCANTILE LAW. By J. A. SLATER, B.A., LL.B. A Practical Exposition for Law Students, Business Men, and Advanced Classes in Commercial Colleges and Schools. Fifth Edition. In demy 8vo, cloth gilt, 464 pp. **7s. 6d.** net.

COMPANIES AND COMPANY LAW. Together with the Companies (Consolidation) Act, 1908; and the Act of 1913. By A. C. CONNELL, LL.B. (Lond.), *of the Middle Temple, Barrister-at-Law.* Second Edition, Revised. In demy 8vo, cloth gilt, 348 pp. **6s.** net.

COMPANY CASE LAW. By F. D. HEAD, B.A. (Oxon), *Barrister-at-Law.* In demy 8vo, cloth gilt, 314 pp. **7s. 6d.** net.

THE LAW RELATING TO THE CARRIAGE BY LAND OF PASSENGERS, ANIMALS, AND GOODS. By S. W. CLARKE, *Barrister-at-Law.* In demy 8vo, cloth gilt, 350 pp. **7s. 6d.** net.

THE LAW RELATING TO SECRET COMMISSIONS AND BRIBES (Christmas Boxes, Gratuities, Tips, etc.). The Prevention of Corruption Acts, 1906 and 1916. By ALBERT CREW, *Barrister-at-Law*; *Lee Prizeman of Gray's Inn.* Second Edition, Revised and Enlarged. In demy 8vo, cloth gilt, 252 pp. **10s. 6d.** net.

BANKRUPTCY, DEEDS OF ARRANGEMENT, AND BILLS OF SALE. By W. VALENTINE BALL, M.A., *Barrister-at-Law.* Fourth Edition. Revised in accordance with the Bankruptcy and the Deeds of Arrangement Acts, 1914. In demy 8vo, 364 pp. **12s. 6d.** net.

PRINCIPLES OF MARINE LAW. By LAWRENCE DUCKWORTH, *Barrister-at-Law.* Fourth Edition, Revised. In demy 8vo, about 400 pp. **7s. 6d.** net.

GUIDE TO THE LAW OF LICENSING. The Handbook for all Licence-holders. By J. WELLS THATCHER, *Barrister-at-Law*. In demy 8vo, cloth gilt, 200 pp. **5s.** net.

RAILWAY (REBATES) CASE LAW. By GEO. B. LISSENDEN. In demy 8vo, cloth gilt, 450 pp. **10s. 6d.** net.

GUIDE TO RAILWAY LAW. By A. E. CHAPMAN, M.A., LL.D. A Handbook for Traders, Passengers, and Railway Students. Second Edition. In demy 8vo, cloth gilt, 239 pp. **7s. 6d.** net.

PARTNERSHIP LAW AND ACCOUNTS. By R. W. HOLLAND, O.B.E., M.A., M.Sc., LL.D., *Barrister-at-Law*. In demy 8vo, cloth gilt, 159 pp. **6s.** net.

THE LAW OF CONTRACT. By the same Author. Revised and Enlarged Edition. In demy 8vo, cloth, 123 pp. **5s.** net.

WILLS, EXECUTORS, AND TRUSTEES. By J. A. SLATER, B.A., LL.B. With a chapter on Intestacy. In foolscap 8vo, cloth, 122 pp. **2s. 6d.** net.

INHABITED HOUSE DUTY. By W. E. SNELLING. In demy 8vo, cloth gilt, 356 pp. **12s. 6d.** net.

THE LAW OF REPAIRS AND DILAPIDATIONS. By T. CATO WORSFOLD, M.A., LL.D. In crown 8vo, cloth gilt, 104 pp. **3s. 6d.** net.

THE LAW OF EVIDENCE. By W NEMBHARD HIBBERT, LL D., *Barrister-at-Law*. Fourth Edition, Revised. In crown 8vo, 120 pp. **7s. 6d.** net.

THE LAW OF PROCEDURE. By the same Author. Second Edition. In demy 8vo, cloth gilt, 133 pp. **7s. 6d.** net.

BUSINESS REFERENCE BOOKS

BUSINESS MAN'S ENCYCLOPAEDIA AND DICTIONARY OF COMMERCE. A reliable and comprehensive work of reference on all commercial subjects, specially designed and written for the busy merchant, the commercial student, and the modern man of affairs. Edited by J A. SLATER, B.A., LL B (Lond). Assisted by upwards of 50 specialists as contributors With numerous maps, illustrations, facsimile business forms and legal documents, diagrams, etc. Second Edition. In 4 vols., large crown 4to (each 450 pp.), cloth gilt. £4 4s. net.

BUSINESS MAN'S GUIDE. Seventh Revised Edition. With French, German, Spanish, and Italian equivalents for the Commercial Words and Terms. Edited by J. A. SLATER, B.A., LL.B. (Lond.). The work includes over 2,000 articles In crown 8vo, cloth, 520 pp. **6s.** net.

COMMERCIAL ARBITRATIONS. By E. J. PARRY, B.Sc., F.I.C., F.C.S. An invaluable guide to business men who are called upon to conduct arbitrations. In crown 8vo, cloth gilt. **3s. 6d.** net.

COMMERCIAL CONTRACTS. By the same Author. A Guide for Business Men. In crown 8vo, cloth, 200 pp. **5s.** net.

THE SHAREHOLDER'S MANUAL. By H. H. BASSETT. In crown 8vo, cloth gilt, 140 pp. **3s. 6d.** net.

THE INVESTOR'S MANUAL. By W. W. WALL In crown 8vo, cloth, 122 pp **3s. 6d.** net.

DICTIONARY OF COMMERCIAL CORRESPONDENCE IN SEVEN LANGUAGES: ENGLISH, FRENCH, GERMAN, SPANISH, ITALIAN, PORTUGUESE, AND RUSSIAN. In demy 8vo, cloth, 718 pp. **12s. 6d.** net. Third Edition.

A MANUAL OF DUPLICATING METHODS. By W. DESBOROUGH. In demy 8vo, cloth, 90 pp., illustrated. **3s.** net.

OFFICE MACHINES, APPLIANCES, AND METHODS. By the same Author. In demy 8vo, cloth gilt, 157 pp. **6s.** net.

COMMERCIAL COMMODITIES. By F. MATTHEWS, B.Sc., A.I.C., F.C.S. In demy 8vo, cloth gilt, 326 pp. **12s. 6d.** net.

COMMON COMMODITIES AND INDUSTRIES SERIES. Each book in crown 8vo, illustrated. **3s.** net. Volumes already published on

Tea
Coffee
Sugar
Oils
Wheat
Rubber
Iron and Steel
Copper
Coal
Timber
Cotton
Silk
Wool
Linen
Tobacco
Leather
Clays
Paper
Soap
Glass
Gums and Resins
The Motor Industry
Boot and Shoe Industry
Gas and Gas Making
Clocks and Watches
Salt
Furniture
Coal Tar
Knitted Fabrics
Zinc
Asbestos
Photography
Silver
Carpets
Paints and Varnishes
Cordage and Cordage Hemp and Fibres
Acids and Alkalis
Gold
Electricity
Butter and Cheese
Aluminium
The British Corn Trade
Engraving
Lead
Stones and Quarries
Clothing Trades Industry
Modern Explosives
Electric Lamp Industry
Starch
Petroleum
Perfumery
Cold Storage and Ice Making
Telegraphy, Telephony, and Wireless
Gloves and the Glove Trade
Jute
The Film Industry
The Cycle Industry
Drugs in Commerce
Cotton Spinning
Sulphur
Ironfounding
Textile Bleaching
Wine and the Wine Trade
Concrete and Reinforced Concrete
Wallpaper
Sponges
Alcohol in Commerce
The Player Piano
The Fishing Industry

(*Others in Preparation.*)

BUSINESS ORGANISATION AND MANAGEMENT.

A Monthly Magazine of High Standard for Business Men.

Price **1s.** Post Free, **1s. 3d.** Annual Subscription, **12s.**

COMPLETE LIST POST FREE ON APPLICATION

SIR ISAAC PITMAN AND SONS, LTD.
Parker Street, Kingsway, London, W.C.2
And at Bath, Melbourne, Toronto and New York.

Slater
Bills, Cheques, And Notes